TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 222.

HANNAH C. GRANDIN, ADMINISTRATRIX OF JOHN H. PIATT, DECEASED, APPELLANT.

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

FILED OCTOBER 10, 1873.

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through John Armstrong, then Secretary of War, to furnish rations for the northwestern army at all and every place where troops might be stationed, marched, or recruited within the limits of the States of Ohio, Kentucky, and the Michigan Territory and northern vicinity, thirty days' notice being given of the post or place where the rations might be wanted, or the number of troops to be furnished on the march, from the 1st day of June, 1814, to the 31st day of May, 1815, both days inclusive, at the following prices—that is to say, at any places where rations should be issued: At Detroit, Fort Wayne, and their vicini-
3 ties, 20c. the ration; at Chicago and Michilimackinac 23 cents the ration; at any other place where troops were or might be stationed or recruited in the Michigan Territory or in Canada, in the vicinity of the upper lakes, and in the State of Ohio north of the Indian boundary and west of Cleveland, at nineteen cents the ration, except at St. Joseph's and such other posts as might be established on the Canada shore of said lakes, where the price of the ration was twenty-three cents; at all other places in the State of Ohio at sixteen cents the ration; the constituent parts of the ration and the proportional value of each part being specifically described in said contract, to a copy of which, herewith filed, your petitioners, for greater certainty, refer.

Your petitioners would further state, that the ninth article of said contract provided that the said John H. Piatt should render his account to the accountant of the Department of War for settlement at least once in every three months; and the tenth article, that all such advances of money as should be made to the said John H. Piatt, on account of supplies to be furnished pursuant to the contract, should be duly accounted for by him by way of set-off against the amount of said supplies, and the surplus, if any, paid to the United States immediately after the expiration of the term of the contract, together with interest at the rate of 6 per cent. per annum from the time of such expiration until the same should be actually repaid.

And it was further provided, that "if any balance shall, on any settlement of the account of the said John H. Piatt, his heirs, executors, or administrators, be found to be due to him or them for or on account of the rations which shall be supplied pursuant to this agreement, the same shall immediatly be paid."

And your petitioners aver, that it was the practice and usage of the Department to make advances to Army contractors, from time to time, of funds sufficient to enable them to purchase and forward the necessary supplies; that the making such advances was contemplated in the 10th article above referred to, and thereby, and in connection with the custom and usage aforesaid, became and was part of the contract between the United States and the said John H. Piatt.

Your petitioners further represent, that on the 1st day of June, 1814, the said John H. Piatt entered upon the execution of said contract,
4 and fully and faithfully complied therewith, down to the 1st day of January, 1815. That at the time of entering into said contract, the United States was in good credit, and had ample means to pay the current expenses of the Army and Navy, in gold and silver. That at that time, and as long as such ability continued, the banks in the western country redeemed their notes in coin; and provisions, such as were necessary to be purchased by said Piatt to fill his said contract, and the transportation thereof, could be procured at fair and reasonable prices. But on the first day of June, 1814, when the said Piatt entered on the execution of his contract, the funds of the Treasury were exhausted, and it was unable to make him any advances, save only in

acceptances and Treasury notes which were uncurrent, and could not be used in purchasing provisions, or exchanged for bank-paper, except at considerable loss. And on the capture of Washington and the destruction of the public buildings and property, in the latter part of August, 1814, the Treasury of the United States became in fact and in public estimation bankrupt; its notes remained in the hands of its creditors unpaid; all confidence in its securities was gone; and, between the 10th and 20th days of September, all banks from New York inclusive, south and west, stopped specie payment. Hence all wholesome restraint upon bank-issues was at an end, and the country was filled with an irredeemable and greatly depreciated paper currency. But even this depreciated bank-paper could not be procured at par for Government securities; and the Treasury notes furnished to Piatt remained useless on his hands. In consequence of this, provisions, transportation, and everything which entered into the cost of executing the said contract, rose to an extravagant price; in many instances, more than double what they were while the Treasury of the United States paid its contractors, and the banks redeemed their notes in gold and silver. In addition to this, the price of whiskey, a constituent part of the ration, was increased by an excise of 20 cents per gallon imposed by the act of 21st December, 1814.

Your petitioners further state, that the said John H. Piatt had, prior to the 1st day of December, 1814, issued rations to the amount of $269,051.28, under his contract, besides a considerable amount that, by the orders of the Secretary of War, was issued at very heavy cost to persons and under circumstances to which his contract did not extend, and for which he was entitled to be paid the actual cost. In addition to this, his issues during the month of December were very large; and on the 26th day of December a requisition was made upon him for 800,000 rations, to be delivered at the frontier posts and in Canada by the 1st of February then next.

And your petitioners state that when the said John H. Piatt entered on the execution of his said contract, there was due from him to the United States $46,112.56 for money remaining in his hands as commissary, which he held and treated as an advance.

That on the 21st of June, 1814, the Secretary of War sent him $50,000 in Treasury-notes, of which, because of their utter want of credit, after the bankruptcy of the Treasury, he was able to use but..... $10,000 00

His drafts on the Treasury, drawn in the summer and early in the fall, were paid to the amount of..... 50,000 00

Which, with the amount in his hands as commissary..... 46,112 56

Made an aggregate of payment to that date of..... $106,112 56

Which was all that was paid him in the year 1814. He had, also, pursuant to the instructions of the Secretary of War, drawn drafts on the Treasury for rations actually issued to a large amount, which were protested for non-payment, because of the inability of the Treasury to meet them; and on the first of January, 1815, they still remained under protest. Your petitioners have no means of ascertaining the precise amount of drafts so protested; but original papers in their possession and which they will produce, show at least $140,000; and the amount proved and admitted, as stated by the 2nd Comptroller, (Gales & Seaton's State Papers, title Claims, p. 783,) appears to have been $210,000. (See also 18th Cong., 1st session, doc. 21, p. 27.) So that instead of advances to make the necessary purchases, or prompt payment in gold or

silver for rations actually issued, there was left unpaid and due him on the first of January, 1815, more than $200,000; his credit was impaired by the protest of his drafts; and a heavy requisition was made upon him to be filled immediately, in the depth of winter, with provisions drawn from an exhausted frontier.

In this condition of things, the said John H. Piatt considered the contract as forfeited by the United States; and he so declared to Mr. Monroe, then Secretary of War, and advised him that he would no longer act, or furnish rations under it, as he could not do so without very
6 heavy loss. His right to relinquish the contract was admitted by Mr. Monroe; but requisitions for supplies were very heavy, provisions difficult to be procured, and no one knew as well as the said Piatt the sources of supply or could so well command them. Mr. Monroe therefore appealed to him, as a patriot, not to desert his country in that day of trial, but to go on and furnish the necessary supplies "under any circumstances," and assured him that he should be fully indemnified or that he should not be a loser; words, the substance and meaning of which were, that he should be paid the full cost of the rations and the expense of furnishing them. To this the said Piatt consented.

Thus, on this appeal to his patriotism, he agreed to apply his collected provisions, his contracts, his credits, his agencies, his business connections and business knowledge to the use and benefit of his country on simple indemnity, and not to use them for his own personal profit or emolument. But feeling himself free from his former contract, he did not agree, nor was it asked of him, to furnish enormous supplies at what he well knew, and what every one knew at the time, must be a ruinous loss.

Under these assurances, and with such payments as the Treasury could make him, which were small, and all, as far as your petitioners are informed, in depreciated paper or securities still less available, the said Piatt went on with renewed energy, and, at great cost and labor, furnished fully the requisite supplies until the army was disbanded after the peace. The number of rations thus furnished by him after the 1st of January, 1815, as settled from his vouchers in the Treasury Department, was 865,935, which actually cost him 45 cents per ration, as he averred, and as your petitioners believe.

But your petitioners state that the officers of the Treasury, feeling themselves bound only by what appeared of record in the Department, allowed the said Piatt, in the settlement of his account for rations furnished after the first day of January, 1815, no more than the original contract-price per ration. Under these circumstances he brought his claim before the Secretary of War, Mr. Crawford, who would have settled it on the principles for which the said Piatt then contended, and which your petitioners now claim to be legal and just, but that, by reason of what he considered countervailing evidence, he had doubts
7 whether such assurances had ever been given. (See reports of Senate Com., April 5th, 1820, doc. 102, p. 5.)

It does not seem to have been doubted that the rations actually cost the amount claimed. But, besides doubt as to the fact of the assurances, it was insisted by some of the accounting officers that the said Piatt ought to have kept and presented an exact account of the cost of the various parcels of provisions purchased and forwarded, vouched by the receipts of the persons of whom they were purchased. This, your petitioners submit, was impossible in many cases, considering the education and habits of the men whom it was necessary to employ, the nature of the business itself, which consisted of much detail, and the situ-

ation of the western frontier in the depth of winter, in which the supplies had to be collected. On the contrary, they insist that the said Piatt was bound by no condition of his contract or understanding to produce such accounts and vouchers; but was entitled to an adjustment of his account on such evidence as the state of the country and the nature of the service admitted, and such as he would have been reasonably required to produce in a like contract with an individual.

Prior to the first day of January, 1815, under his written contract he was paid by the ration without regard to cost. All the supplies then on hand, which had not been actually issued, were purchased and transported with a view to that contract. There was, therefore, no reason for keeping a special account and exact vouchers of these purchases. The same was the case with purchases made in the interior, where the provisions were not yet brought to the place of issue. And with respect to purchases made in February and March, 1815, it was not practicable to change immediately his system of accounts with his numerous scattered purchasing agents, even if they had been men of business and capable of keeping such accounts, and if he had been advised of what would be exacted of him by the accounting officers, which he does not appear to have been. As to the issuing agents, they, both before and after the 1st of January, did, as the contract required, keep exact accounts and take care that they were regularly vouched.

Your petitioners further state, that in the month of September, 1819, the said John H. Piatt, while endeavoring to establish his claim, and obtain its allowance, was arrested on a capias ad respondendum at
8 the suit of the U. States, for an alleged balance against him of $48,230.77. That while at large on special bail, in the early part of the year 1820, he brought his claim before Congress. It was referred to the Committee of the Judiciary of the Senate, and a report thereon was made on the 5th day of April, 1820, (Gales & Seaton's State Papers, title Claims, pp. 734, '6,) adverse on two grounds, viz: 1st. Doubt as to the assurances; and 2d, the want of exact proof of the cost of the various items of provisions furnished, which report, above referred to, professes to give the views of Mr. Crawford on the subject, and, as your petitioners suppose, correctly.

On the 8th of May thereafter, an act was passed for his relief, requiring the accounting officers of the Treasury to settle his accounts on equitable principles, expressly recognising the assurances of the Secretary of War, but limiting the allowances which should be made under them to the sum for which suit had been commenced—namely, $48,230.77. The act is in the following words:

"An act for the relief of John H. Piatt.

"*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled*, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to settle the accounts of John H. Piatt, including his accounts for transportation, on just and equitable principles, giving all due weight and consideration to the settlements and allowances already made, and to the assurances and decisions of the War Department: provided, that the sum allowed under the said assurances shall not exceed the amount now claimed by the United States, and for which suits have been commenced against the said John H. Piatt."

On the 7th day of July, 1820, the account of the said Piatt was settled at the Treasury Department, under the provisions of this act, by

the final decision of the 2d Comptroller, and the said Piatt received credit to the further amount of $74,475.85 for allowances to which he was entitled on just and equitable principles, irrespective of assurances from the War Department. This sum was reduced by an error of $12,885.37, discovered in his account after the same had been stated and suit brought. It was therefore not included in the suit, and could not be settled by the application of the amount due him under the
9 head of assurances, but was settled and liquidated out of the said $76,475.85; leaving a balance due thereon to the said Piatt of $63,620.48, which there was no appropriation to pay, and which therefore remained subject to the future disposition of Congress.

In stating the further account under the head of assurances, the 2d Comptroller confined himself strictly to the limitation prescribed by the act. He states this part of the account as follows, (see Gales and Seaton's State Papers, title Claims, p. 783, top of page:)

"*Allowances under the assurances of the War Department.*

"To the amount of 849 barrels of flour, delivered at Lower Sandusky in January and February, 1815, including transportation to Detroit, and beef delivered in the same month at Urbana and Detriot, per statement B	$75,976 27
From which deduct contract price allowed him	30,225 51
Admitted to his credit by 3d Auditor under this head	$45,750 76
For this amount to his credit, &c	2,493 08
	$48,243 84
Deduct excess	13 07
Leaves as a credit under the head of assurances the amount allowed by the act for which Piatt was in custody	$48,230 77"

But your petitioners represent that this did not settle or profess to settle the actual amount due to said Piatt, in justice and equity, under those assurances.

The supposed debt to the United States was thus removed; and, about the 25th of July, 1820, the said Piatt was discharged from custody on the payment of all costs and charges of his prosecution and imprisonment; and an admitted balance stood to his credit of $63,620.48, a large part of which he immediately transferred to some of his creditors. But this tardy and stinted justice availed him nothing. He was a crushed and broken man; his mental energies were exhausted; his bodily health was destroyed, and his fortune ruined. Large debts incurred in the service of his country, and which it was impossible for him to pay, pressed heavily upon him. He was arrested by some of his
10 creditors while in Washington prosecuting his claim; and on the 12th of February, 1822, died while in the custody of the marshal.

After his death, in the winter of 1823-'4, a petition was presented by his administrators and the assignees of the claim to Congress for their common relief, and on the 9th day of January, 1824, a report was made by a select committee of the House of Representatives (18th Cong., 1st sess., Doc. 21) expressing the opinion that the said Piatt was, on the 1st day of January, 1815, fully exonerated from his original contract, and entitled, under the assurances, to the sum which he could have got for the provisions then on hands, "if, liberating himself from all engagements, he had offered them for sale;" and that he was entitled, for such

as were purchased afterwards, to so much as they cost him, the amount to be ascertained by reasonable and practicable evidence. To this report, presented by Hon. John Sergeant, chairman, and to its statement and argument, your petitioners respectfully refer. The report was accompanied with a bill for the payment of the $63,620.48 found due, as above shown, on just and equitable principles, irrespective of the assurances of the Secretary of War, which bill became a law, and the amount was paid under it, part to the creditors to whom it was assigned and the residue to the administrators. (See act May 8th, 1820, copied above.)

And your petitioners represent that there was thus settled and paid under the acts of Congress aforesaid, irrespective of the assurances, all the claims of the said John H. Piatt for the amount due him for rations issued under his contract, and to Indians and distressed inhabitants, and to troops of whose route and station he had not due notice, and to volunteers, prior to January 1, 1815; and also for all other services rendered or property furnished prior to that date; and that there was settled and paid him under the assurances the excess of cost over price, as per contract of January 26th, 1814, on 849 barrels of flour, delivered at Lower Sandusky in January and February, 1815, including transportation to Detroit, and beef delivered in the same month at Urbana and Detroit, as found in statement B; and an additional allowance of $2,480.07, also found in the said statement B, which paper remains in the files of the Treasury, and to which your petitioners cannot obtain access without the order of this court. But there was not in-
11 cluded in either branch of said settlement the amount to which he was justly entitled for the difference between gold and silver, and the depreciated currency and securities in which he was paid, which difference ranged from twenty to thirty per cent., as your petitioners believe, and will prove, as your honors may direct. Nor was due allowance made to him in said settlement for the damages which he sustained by the failure of the United States to make the necessary allowances for the purchases, and the withholding of payment after those purchases were made.

And your petitioners further state that the select committee, pending their investigations, called upon the 3d Auditor and 2d Comptroller for a provisional statement of the amount still due the said Piatt under the assurances.

The statement of the 2d Comptroller, in answer to the letter of the committee, is to be found in Gales and Seaton's State Papers, title Claims, p. 906, G, to which your petitioners refer.

This provisional account shows the number of rations issued on and after January 1, 1815, to be as follows:

At Upper Sandusky, &c	183,951
At Detroit, after deducting the amount of provisions collected from the inhabitants of Upper Canada	420,738
At Fort Gratiot, after deducting the amount of provisions collected as aforesaid	261,245
Making in the aggregate, (rations)	865,934

But a portion of this amount had been issued to Indians, to distressed inhabitants, and otherwise applied by orders of the commanding officers, to purposes not within the original contract, and, consequently, not within the assurances which had relation to it, and was accordingly

settled and paid for at its reasonable cost by the accounting officers of the Treasury. The number of rations which had been so settled and paid for is stated by the 2d Comptroller at $135,863.09, leaving to be paid for under the assurances 730,070.01 rations, which at

45 cts. per ration, amounted to	$328,531 54
From which deduct the amount of the original contract-price paid as above	148,791 87
Leaves a balance of	$179,739 67
But of this there had been applied to the debt for which said Piatt was arrested	48,230 77
Which left a balance then and still due him, of	$131,508 90

Your petitioners leave out of the estimate the sum of $2,630.73, subtracted from the account of the Comptroller, a second time, by mistake, and corrected by him in a note to his statement. Gales and Seaton's State Papers, title Claims, pp. 907, G, note 2.

Your petitioners further represent that, although they do not admit that the account as stated does justice to the claim, yet, as a re-statement would be tedious and difficult, they are content to take it in each and all its parts as stated above by the 2d Comptroller, except that they claim upon principles of equity and justice the difference between the funds and securities which were paid to the said Piatt, and gold and silver. They also claim the just measure of damages which he sustained by the failure of the Department to make the necessary advances, and for its withholding payment after such purchases were made. And they will insist that the act of 1820, requiring that account to be settled on just and equitable principles, placed the United States on precisely the same footing as a common party litigant in a court of chancery, and made it subject to all the liabilities to which an individual party would, under like circumstances, have been subjected.

The "decisions of the War Department" recognized in that act, a certified copy of which is herewith filed, and which is identified by the statement of the 2d Comptroller, (Gales and Seaton's State Papers, title Claims, p. 781,) directs that the claimant be allowed compensation for all losses "sustained by payment of interest or damages in consequence of the Department being unable to make the necessary advances." This forms part of the act of 1820, and became, and still is, to this extent, the law of the case. The United States, it is true, does not, by this act, agree to pay interest eo nomine, but it agrees to pay as damages "all losses sustained" by the contractor, "by payment of interest, &c," by reason of the failure of the United States to comply with the contract. This is simply the adoption of a principle of national obligation and law, which had been sometimes doubted; and your petitioners will ask leave to show that the said John H. Piatt, in consequence of the De-
13 partment being unable to make the necessary advances, paid interest at a very heavy rate upon all, or nearly all, the money used by him in making his purchases, down to the time when the money so advanced was refunded by actual payment from the Treasury.

Your petitioners admit and state, that damages to the amount of $21,000 on $210,000 of protested drafts was allowed the said Piatt on the settlement of his account; and, as your petitioners are informed, some small items of interest also, the aggregate of which they cannot state without reference to the files of the Department, but which, they are informed and believe, fell very far short of the amount "of losses sustained" by him "by payment of interest and damages in consequence

of the Department being unable to make the necessary advances." They will also claim that the said Piatt was entitled not only to advances from time to time reasonably sufficient to make his purchases, but that he was entitled to such advances in gold and silver, or its equivalent; and they aver, and expect to show, that no money whatever was paid him, or, if any, very inconsiderable sums, and the assets which he was compelled to take, from time to time, in payment, and in lieu of advances, were not and could not be used as money, but were necessarily exchanged by him at a considerable loss for bank paper, worth less by 20 or 25 per cent. than gold and silver; and that by this he suffered a loss of more than 25 per cent. on all his purchases. This they will claim, should, "according to justice and equity," be allowed them.

And if your honors should be of opinion that your petitioners are not entitled to the actual cost of rations issued after the 1st day of January, 1815, under the assurances of the Secretary of War, they will claim that they are entitled from that time, as well as prior to that time, to the difference in value between the assets received as advances or in payment, and gold and silver; and where sufficient advances were not made for the necessary purchases, that they are entitled to be paid the amount of all losses sustained by said Piatt, his executors or administrators, by the payment of interest or damages in consequence of the Department being unable to make such advances, down to the time in which such payments shall have been or shall actually be made; and, moreover, that they are entitled to remuneration for the additional sum paid by the said Piatt for spirits as a component part of the ration,
14 in consequence of the increased duty of twenty cents per gallon laid on the manufacture of spirits by the 1st section of the act of December 21st, 1814.

Your petitioners further state that on the 21st day of January, 1834, the claim was again brought before Congress in the Senate; and on the 27th June, the Committee of Claims, to which it had been referred, reported favorably, and accompanied their report with a bill for the relief of the legal representatives of the said Piatt. The bill was read the first time in the Senate, and ordered to a second reading, but no further action was had on it for want of time. The report is in the Senate documents, 1833–'4, vol. 6, doc. 488. On pages 14 and 15 is the answer of J. B. Thornton, 2d Comptroller, to inquiries sent him by the committee, in which he states the sum due to said Piatt to be $128,878.17. But he falls into an obvious error in deducting the $2,630.73, which is explained above, and more particularly in a note to page 907, State papers, title claims, already referred to by your petitioners. With this exception, his report coincides with that of his predecessor as to the amount and merit of the claim.

Your petitioners further state, that there was a report adverse to their claim, made by a committee of the Senate on the 19th day of January, 1840. Senate doc. No. 87. That there was a favorable report made by the Committee of Claims of the House, July 12, 1848, (report No. 747;) and again by the committee of the House, May 16th, 1850, (report No. 325,) each accompanied with a bill for the relief of your petitioners; neither of which passed further than a second reading for want of time.

And your petitioners claim that they are entitled to the balance of $131,508.90, as shown in the provisional statement of the Second Comptroller, above referred to, and legal interest thereon in the name of damages, until the same shall be paid.

But in case your honors should reject the said provisional adjustment, they will claim such other sum as they may prove to have been the cost

of the rations furnished subsequently to the 1st day of January, 1815, with a due allowance for the services of the said John H. Piatt, his agents and servants, after deducting the amount already paid.

But if your honors should reject the assurances of the Secretary of War, and hold that the said Piatt continued bound to furnish rations, under the original contract, after the 1st of January, 1815,
15 your petitioners will claim that they are entitled to such damages as the said John H. Piatt sustained by the failure of the United States to make the necessary advances from time to time, or to make prompt payment in gold and silver; and also to the enhanced price of the ration by reason of the excise of December 21st, 1814, with legal interest, in the name of damages, on such sum as the court may find to be due after deducting the amount heretofore paid. And they will insist, that in whatever aspect the claim may be viewed by the court, the rights of your petitioners be settled "on just and equitable principles," as in a court of equity between man and man.

Your petitioners pray that your honors will take into consideration their claim, and make such award therein as may be consistent with law and justice; and your petitioners, as in duty bound, will ever pray.

WM. JOHNSTON,
THOS. WILSON,
BEN. M. PIATT,
Counsel of Petitioners.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, Donn Piatt, who, being duly sworn, states that he is one of the claimants in the foregoing petition, and that no assignment or transfer of the claim mentioned in said petition or any part thereof, or any interest therein, has been made; that the said claimants, after allowing all just credits and offsets, are justly entitled to the amount therein claimed, and that he believes the facts as stated in the said petition are true.

DONN PIATT.

Subscribed and sworn to before me, this 26th day of December, 1868.
[SEAL.]
N. CALLAN,
Notary Public.

16 In the Court of Claims of the United States, December term, 1872.

ABRAM S. PIATT ET AL. *vs.* THE UNITED STATES. } No. 2205.

Plea.

Now come the defendants, by their Attorney-General, and say that the claimant herein should not further have or maintain suit against the defendants for the reason that the petition of the claimant was not filed in this court nor transmitted to it within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment, &c.

WILLIAM McMICHAEL,
Assistant Attorney-General.

(Indorsed:) No. 2205. Court of Claims. Abram S. Piatt et al. vs. The United States. Plea. William McMichael, Assistant Attorney-General. Filed March 19, 1873.

17 In the Court of Claims.

HANNAH C. GRANDIN, ADMINISTRATRIX OF JOHN H. Piatt, *vs.* THE UNITED STATES. } No. 2205.

And now, to wit, on the 4th day of June, 1873, the court upon due consideration of the premises, find for the defendants, and do order, adjudge, and decree, that the claimant's petition be dismissed.

Court of Claims, Dec. term, '72.

HANNAH C. GRANDIN, ADMINISTRATRIX OF JOHN H. Piatt, deceased, *vs.* THE UNITED STATES. } No. 2205.

Now comes the plaintiff, in the above-entitled cause, and prays the court to grant this, her application, for an appeal to the Supreme Court of the United States from the judgment heretofore rendered by this court in this cause.

THO'S WILSON,
Att'y for Pl'ff.

Allowed June 5, 1873.
C. D. DRAKE, *C. J.*

Filed June 5, 1873. J. R.

18 No opinion was delivered in this case.

ARCH. HOPKINS,
Ch. Clerk C't of Claims.

19 United States Court of Claims.

HANNAH C. GRANDIN, ADMINISTRATRIX OF JOHN H. Piatt, deceased, *vs.* THE UNITED STATES.

FINDINGS OF FACT.

This case having been heard before the chief justice and judges of the Court of Claims, at the city of Washington, the court, after due deliberation upon the proofs and evidence given at the trial, does hereby, on the 4th day of June, 1873, at the time of rendering judgment, find the following facts:

I. John H. Piatt, the claimant's intestate, on the 14th of January, 1814, entered into the written contract for furnishing rations to the Northwestern Army from the 1st day of June, 1814, to the 31st day of May, 1815, set forth and described in the petition.

II. On the 1st of January, 1815, Piatt had furnished and delivered rations according to the terms of his contract to the amount of $269,051.28, but the defendants had not complied with the terms of the contract, and had neglected and failed to pay for such rations according to the terms thereof, and were then in default to the amount of $210,000, and were, in fact, unable to comply with its terms.

III. On or about the 1st day of January, 1815, at a personal interview, in the city of Washington, Piatt notified Mr. Monroe, the Secretary of War, that he would furnish no more rations under the contract, and the Secretary admitted to Piatt the inability of the defendants to comply with the terms of the contract on their part, both as to money already due and as to money which might become due for future supplies. But a military exigency then rendered it necessary that a large quantity of rations should be furnished immediately for the Northwestern Army, and it was thereupon agreed by parol, between Piatt and the Secretary of War, that, in consequence of Piatt's furnishing the rations which might be required, he should receive for them whatever price they should be reasonably worth at the time and place of delivery; and that the defendants, instead of paying as required by the terms of the original contract, should defer payment until such time or times as they should have the requisite funds.

IV. Under the parol agreement, in the third finding as set forth, Piatt furnished and delivered to the defendants 730,070.10 rations, the fair and reasonable value of which, at the times and places at which they were furnished, was 45 cents per ration, amounting in the aggregate to $328,531.54. But, on the settlement of Piatt's account at the close of the war, the officers of the Treasury, having no knowledge or evidence of the parol agreement under which the rations were furnished, allowed and paid to Piatt only the price designated in the original written contract, amounting in the aggregate to the sum of $148,791.87, and leaving due a balance of $179,739.67. But there was subsequently allowed to Piatt, as a payment under the private act 8th May, 1820, (6 Stat. L., p. 245,) in the manner set forth in the next finding, the further sum of $48,230.77, leaving a balance of $131,508.90, which still remains due and unpaid.

V. In September, 1819, an action was brought by the United States against Piatt, and he was arrested on a capias ad respondendum for an alleged balance of $48,230.77, due from him as commissary of subsistence; and while the suit was still pending, and he on bail, Congress passed for his relief the private act 8th May, 1820, (6 Stat. L., p. 245,) in the words following:

"AN ACT for the relief of John H. Piatt.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to settle the accounts of John H. Piatt, including his accounts for transportation, on just and equitable principles, giving all due weight and consideration to the settlements and allowances already made, and to the assurances and decisions of the War Department: *Provided*, That the sum allowed under the said assurances shall not exceed the amount now claimed by the United States, and for which suits have been commenced against the said John H. Piatt."

Under and in pursuance of this act, the accounting officers of the Treasury settled the accounts of Piatt as follows:

First. The accounting officers allowed him a credit of $74,475.85 for transportation and rations furnished by him for the use of citizens and Indians, not embraced nor included within either of the contracts or agreements before described, from which credit certain deductions were made, leaving a balance of $63,620.48.

Secondly. They allowed him a credit upon a certain specified portion of the rations delivered upon the parol agreement, before mentioned, equal to the amount then claimed by the United States in the suit against him, to wit, the sum of $48,230.77; and such credit was ascertained in the following manner: They first estimated the fair and reasonable value of the specific portion of the rations thus referred to; they then deducted therefrom the price per ration already paid to him; and from the balance thus ascertained, they made a further deduction sufficient to reduce the amount of the credit to the said sum of $48,230.77, as required by the proviso to the private act.

VI. After the death of Piatt, Congress passed the private act 24th May, 1824, (6 Stat. L., p. 314,) and there was paid thereunder, to the assignees and administrators of Piatt, the sum of $63,620.48, the same being for the transportation and rations furnished to citizens and Indians, described in the fifth finding, and not for the Army supplies previously described.

The plaintiff is the duly-appointed administratrix of the estate of the said John H. Piatt, deceased.

The plaintiff, the said John H. Piatt, in his life-time, and his heirs also, are and were citizens of the United States; have at all times borne true allegiance to its Government; and have never, at any time, afforded aid or comfort, or given encouragement to rebellion against the Government of the United States.

And the Court of Claims, being equally divided upon the right of the claimant to recover, does, for the purposes of an appeal to the Supreme Court, decide as—

21 CONCLUSIONS OF LAW.

I. The parol agreement, entered into by John H. Piatt and the Secretary of War, after the forfeiture and abandonment of the original written contract, being a new contract upon a new consideration, was valid, and, under such agreement, the defendants became indebted to Piatt for the fair and reasonable value of the rations furnished under it, and for the balance of $131,508.90.

II. But this action is barred by the allowance made by the accounting officers of the Treasury under the private act May 8, 1820, which must be construed to have been intended by Congress as a settlement of all claims against the defendants.

22 (Copy.)

In the Court of Claims of the United States. December term, 1872.

ABRAM S. PIATT ET AL. *vs.* THE UNITED STATES. } No. 2205.

And now comes the Attorney-General on behalf of the United

States, and asks the court to find the following facts in the above-stated case:

First. That on the 26th day of January, 1814, a contract was entered into between the United States and John H. Piatt, of which a copy is recited in report 747, House of Representatives, Thirtieth Congress, first session, (see reports of committees, library, House of Representatives, vol. 470.)

Allowed.

Second. That the rations (or supplies) for which additional
23 compensation is claimed in this case were furnished by reason of this contract, and under its terms.

Refused as against the weight of evidence.

Third. That the rations (or supplies) for which additional compensation is claimed in this suit were all paid for at the contract-price; such payments being made to John H. Piatt, or his legal representatives.

Refused except as set forth in the findings of the court.

Fourth. That the United States has made payment in full to John H. Piatt, or his legal representatives, for all the rations (or supplies) for which additional compensation is claimed in this suit.

Refused, except as set forth in the findings of the court.

Fifth. That John McLean was the only witness examined by the claimants to prove the alleged assurance given by Mr. Monroe to John H. Piatt, and that in reference to the interview at which
24 Record 37. these assurances are alleged to have been given, he, John McLean, says: "I have no distinct recollection of the words used in the interview."

Refused as evidence.

Sixth. That in a letter dated Washington City, January 10, 1815, signed by John H. Piatt, and addressed to Hugh Slenn, Cincinnati, the following words occur:

"I shall rely solely upon the liberality of my Government for remuneration for any losses I may sustain."

Refused as evidence.

Seventh. That Hugh Slenn, to whom said letter was addressed, was an agent, or subcontractor, of John H. Piatt.

Refused as irrelevant.

Eighth. That the following is a copy of the account stated in claimant's brief as the claim in this suit:

25 Record 64. "U. S. dr., 130,079 rations, 45 cents..... $328,531 54

U. S. cr., contract-price paid.....	$148,791 87	
U. S. cr., judgment U. S. vs. Piatt.....	48,230 77	
To be deducted.....		197,022 64
Leaves a balance of principal due....		131,508 90"

Refused as irrelevant.

Ninth. That, in addition to the amounts credited in the above-stated account, the United States has paid to John H. Piatt, or his legal representatives, the sum of $63,620.48, (act of May 24, 1824, 6 Statutes at Large, 314.)

Refused, except as set forth in the findings of the court.

Tenth. That no witness was examined by claimants to show the actual cost of the rations (or supplies) furnished by John H. Piatt.

Refused as irrelevant.

Eleventh. That there is no evidence in this case as to the cost of the rations (or supplies) for which additional compensation is claimed in this suit.

Refused as irrelevant.

(Signed) WILLIAM McMICHAEL,
Assistant Attorney-General.

(Indorsed:) 2205. In the Court of Claims of the United States. Abram S. Piatt et al. vs. The United States. 2205. Request for findings. William McMichael, Assistant Attorney-General. Filed M'ch 20, '73. J. R.

26 HANNAH C. GRANDIN, ADMINISTRATRIX of John H. Piatt, *vs.* THE UNITED STATES. } No. 2205.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and of the final judgment of the court thereon of the application on behalf of the claimant for an appeal of the findings of fact and the conclusions of law thereon on which the court founded its final judgment; and also of the request of counsel for the defendant to find as to matters of fact, with the ruling of the court thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of the court this 11th day of July, 1873.

[SEAL.] ARCH. HOPKINS,
Chief Clerk Court of Claims.

(Indorsement on cover:) No. 222. Hannah C. Grandin, adm'x of John H. Piatt, dec'd, appellant, vs. The United States. Court of Claims. Filed 10th October, 1873.

Field

Supreme Court of the United States.

OCTOBER TERM, 1874.

No. 222.

HANNAH C. GRANDIN, ADMINISTRATRIX DE BONIS NON OF JOHN H. PIATT, DECEASED, APPELLANT.

vs.

THE UNITED STATES.

Appeal from the United States Court of Claims.

BRIEF AND ARGUMENT FOR PLAINTIFF,

BY

WILLIAM JOHNSTON AND BEN. M. PIATT.

Attorneys for Plaintiff:

WILLIAM JOHNSTON, Cincinnati, O.
BEN. M. PIATT, Covington, Ky.
THOMAS WILSON, Washington, D. C.

Judd & Detweiler, Printers.

Supreme Court of the United States.

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HANNAH C. GRANDIN, ADMINISTRATRIX DE BONIS NON OF JOHN H. PIATT, DECEASED, APPELLANT.

vs.

THE UNITED STATES.

Appeal from the United States Court of Claims.

STATEMENT OF THE CASE.

This is an old claim, originating in the war of 1812. John H. Piatt, under whom we claim, was a pioneer merchant of Cincinnati, one of the richest in the Northwestern Territory, well and favorably known to the public, and perhaps better acquainted with the sources of supply for an army than any other man. These considerations brought him into the public service as commissary of subsistence to the Northwestern Army. He served in this capacity till the 26th of January, 1814, at which time there remained in his hands unexpended, of the commissariat fund, $46,112.56.

On the 26th of January, 1814, by a written contract with John Armstrong, Secretary of War, he became a contractor

of supplies for the Northwestern Army for one year, to begin on the 1st day of June, 1814, and end on the 31st day of May, 1815, at an average rate of twenty cents the ration; and as the usage then was to make advances in money to contractors, he retained in his hands, as an advance from the Department, the balance of the commissariat fund.

On the 26th of January, when the contract was made, the Treasury was flush, and the Government was paying its debts in gold and silver. By the 1st of June, when it was to take effect, the gold and silver were exhausted, and the Government had resorted to Treasury notes, which passed at a large discount. Worse yet: In the month of August the enemy captured Washington and burnt the Capitol. This blow paralyzed the business of the whole country. All the banks south and west of New York suspended specie payments. The country was flooded with irredeemable paper. The currency went down and produce went up, till supplies could not be had for less than forty-five or fifty cents the ration.

By the first of January, 1815, after expending the balance of the commissariat fund, and all other funds he had received, the United States owed him, for supplies already delivered, near a quarter of a million, and his drafts on the Government for $210,000 lay under protest for the want of funds in the Treasury to pay them. (2d Finding, p. 12.)

He had exhausted his means, mortgaged his estates, involved his friends, and was staggering under the load of $210,000 protested drafts, when, on the 26th of December, 1814, General McArthur made a requisition on him for 800,000 rations, to be delivered in thirty days, which, at existing rates, would cost $360,000 more. (3d Finding, p. 12.)

Unable to meet this requisition, and unwilling the public service should suffer from his failure, he repaired to Washington to lay the matter before the War Department. Accompanied by the late Mr. Justice McLean, then his representative in Congress, he waited on Mr. Monroe, acting Secretary of War, and stating his case, announced his determination to furnish no more rations under his contract, believing and being advised by eminent counsel that it was forfeited. (3d Finding, p. 12.) Mr. Monroe did not pretend that the contract was not broken; admitted the inability of the Government to comply with the contract, both as to money already due, and as to money which might become due for future supplies; and the conference ended in an oral contract, whereby the Secretary agreed to pay for future supplies whatever price they should be reasonably worth at the times and places of delivery; and Piatt agreed to furnish the supplies and wait for his money till the Government should be able to pay.

This new contract inspired confidence in the friends and creditors of Mr. Piatt at home, and revived his failing credit, and under it he furnished promptly all the supplies required till the army was disbanded at the close of the war. The supplies thus furnished amounted to 730,070.10 rations, which cost him, at the least, forty-five cents the ration, (4th Finding, p. 12,) in gross $328,531.54, of which he received only $148,791.87, the old contract price, the accounting clerks not being as yet advised of the new contract, and being governed by the stipulations of the old. This left him out of pocket $179,739.67.

Mr. Piatt performed other valuable services for the Government, under instructions from the War Department, not

contemplated by either the old or the new contract, such as transporting military stores from post to post, feeding refugees, both whites and Indians, to the value, after all deductions, of $63,620.48. (5th Finding, p. 13.)

The nation was poor, the Government slow pay, and the accounting officers hard to please in the forms of evidence; and both these accounts, amounting together to $243,360.15, remained unsettled over five years after the close of the war.

Meanwhile, paying interest to his creditors at home, and receiving neither interest nor principal from the Government at Washington, reduced him to poverty and well nigh to desperation.

To make his case more distressing, in September, 1819, an action was brought in the name of the United States *vs.* John H. Piatt, for an alleged balance of the commissariat fund, he was arrested on a writ of *capeas ad respondendum*, and held to bail, and this action was still pending on the 8th day of May, 1820, when Congress passed an act for his relief.

This act recognized both the existence and the obligation of Mr. Monroe's assurances, (as the new contract was called,) and regardless of technicalities which stood in the way, required the accounting officers to settle the accounts of Piatt, including his account for transportation, on just and equitable principles, but by a proviso, limited the *allowance* to be made him under the assurances to the sum claimed by the United States, for which suits had been commenced against him. (5th Finding, p. 12.)

Under the requirements of this act, the accounting officers took up the account for transportation, feeding refugees and the like, and settled it, allowing him a balance of $63,620.48. (5th Finding, p. 13.)

They then took up the account for rations furnished under the assurances, but instead of settling the whole account on just and equitable principles, they undertook to reduce it to the sum for which he had been sued. To accomplish this they dropped out of the account 520,000 rations, equal in value to $131,508.90, and took for the basis of their calculations a specific portion only, sufficient to satisfy the claim of the United States, and thus cut down the account from $179,739.67 to $48,230.17.

This allowance, which required no money, was passed to his credit, and the action against him dismissed, but the bulk of the account never was settled till it was settled by the Court of Claims.

Mr. Piatt assigned his voucher for $63,620.48 to his creditors; but the money was not paid, for the reason that there was no appropriation applicable to his claims. His creditors became impatient and cast him into prison. He gave bail for the prison bounds and strove for a while to collect his dues and pay his debts, but his energies, both of mind and body, were crushed, and on the 12th day of February, 1822, he died on the prison bounds in the city of Washington.

Four years after the transportation account was settled, and two years after Piatt's death, 24th May, 1824, Congress made an appropriation for this account, and the money was paid to his assignees and administrators. But the account for rations under the assurances, never having been settled by the accounting officers, no appropriation was made for that, and there still remains "due and unpaid" $131,508.90. (4th Finding, p. 12.)

When this cause was heard in the Court of Claims, four only of the judges were present, one of the five being unable

to sit on account of ill health, and no immediate prospect of a full bench. These four judges were unanimous in all the findings of fact and on the first conclusion of law, but equally divided as to the right of the claimant to recover; and for the purposes of an appeal a judgment *pro forma* was entered for the defendant. (6th Finding, p. 13,)

This statement of the case, I believe, is sustained in all its material parts by the findings of the Court of Claims. Here they are:

"FINDINGS OF FACT.

"This case having been heard before the Chief Justice and judges of the Court of Claims, at the city of Washington, the court, after due deliberation upon the proofs and evidence given at the trial, does hereby, on the 4th day of June, 1873, at the time of rendering judgment, find the following facts:

"I. John H. Piatt, the claimant's intestate, on the 14th of January, 1814, entered into the written contract for furnishing rations to the Northwestern army from the 1st day of June, 1814, to the 31st day of May, 1815, set forth and described in the petition.

"II. On the 1st of January, 1815, Piatt had furnished and delivered rations according to the terms of his contract to the amount of $269,051.28, but the defendants had not complied with the terms of the contract, and had neglected and failed to pay for such rations according to the terms thereof, and were then in default to the amount of $210,000, and were, in fact, unable to comply with its terms.

"III. On or about the 1st day of January, 1815, at a personal interview, in the city of Washington, Piatt notified Mr. Monroe, the Secretary of War, that he would furnish no more rations under the contract, and the Secretary admitted to Piatt the inability of the defendants to comply with the

terms of the contract on their part, both as to money already due and as to money which might become due for future supplies. But a military exigency then rendered it necessary that a large quantity of rations should be furnished immediately for the Northwestern army, and it was thereupon agreed by parol, between Piatt and the Secretary of War, that, in consequence of Piatt's furnishing the rations which might be required, he should receive for them whatever price they should be reasonably worth at the time and place of delivery; and that the defendants, instead of paying as required by the terms of the original contract, should defer payment until such time or times as they should have the requisite funds.

"IV. Under the parol agreement, in the third finding as set forth, Piatt furnished and delivered to the defendants 730,070.10 rations, the fair and reasonable value of which, at the times and places at which they were furnished, was 45 cents per ration, amounting in the aggregate to $328,531.54. But, on the settlement of Piatt's account at the close of the war, the officers of the Treasury, having no knowledge or evidence of the parol agreement under which the rations were furnished, allowed and paid to Piatt only the price designated in the original written contract, amounting in the aggregate to the sum of $148,791.87, and leaving due a balance of $179,739.67. But there was subsequently allowed to Piatt, as a payment under the private act 8th May, 1820, (6 Stat. L., p. 245,) in the manner set forth in the next finding, the further sum of $48,230.77, leaving a balance of $131,508.90, which still remains due and unpaid.

"V. In September, 1819, an action was brought by the United States against Piatt, and he was arrested on a *capias ad respondendum* for an alleged balance of $48,230.77, due from him as commissary of subsistence; and while the suit was still pending, and he on bail, Congress passed for his relief the private act of 8th May, 1820, (6 Stat. L., p. 245), in the words following:

"'*An act for the relief of John H. Piatt.*

"'*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the proper accounting officers of the Treasury Department be, and they are hereby authorized and required to settle the accounts of John H. Piatt, including his account for transportation, on just and equitable principles, giving all due weight and consideration to the settlements and allowances already made, and to the assurances and decisions of the War Department: *Provided*, That the sum allowed under the said assurances shall not exceed the amount now claimed by the United States, and for which suits have been commenced against the said John H. Piatt.'

"Under and in pursuance of this act, the accounting officers of the Treasury settled the accounts of Piatt, as follows:

"*First.* The accounting officers allowed him a credit of $74,475.85 for transportation and rations furnished by him for the use of citizens and Indians, not embraced or included in either of the contracts or agreements before described, from which credit certain deductions were made, leaving a balance of $63,620.48.

"*Secondly.* They allowed him a credit upon a certain specified portion of the rations delivered upon the parol agreement, before mentioned, equal to the amount claimed by the United States in the suit against him, to wit, the sum of $48,230.77; and such credit was ascertained in the following manner: They first ascertained the fair and reasonable value of the specific portion of the rations thus referred to; they then deducted therefrom the price per ration already paid to him; and from the balance thus ascertained, they made a further deduction sufficient to reduce the amount of the credit to the said sum of $48,230.77, as required by the proviso to the private act.

"VI. After the death of Piatt, Congress passed the private act, 24th May, 1824, (6 Stat. L., p. 314,) and there was paid thereunder, to the assignees and administrators of John H. Piatt, the sum of $63,620.48, the same being for transportation and rations furnished to citizens and Indians, described in the fifth finding, and not for the army supplies previously described.

"The plaintiff is the duly appointed administratrix of the estate of the said John H. Piatt, deceased.

"The plaintiff, the said John H. Piatt, in his lifetime, and his heirs also, are and were citizens of the United States, have at all times born true allegiance to its Government, and have never, at any time, afforded aid or comfort, or given encouragement to rebellion against the Government of the United States.

"And the Court of Claims, being equally divided upon the right of the claimant to recover, does, for the purposes of an appeal to the Supreme Court, decide as—

"CONCLUSIONS OF LAW.

"I. The parol agreement, entered into by John H. Piatt and the Secretary of War, after the forfeiture and abandonment of the original written contract, being a new contract upon a new consideration, was valid, and, under such agreement, the defendants became indebted to Piatt for the fair and reasonable value of the rations furnished under it, and for the balance of $131,508.90.

"II. But this action is barred by the allowance made by the accounting officers of the Treasury under the private act May 8, 1820 which must be construed to have been intended by Congress as a settlement of all claims against the defendants."

ASSIGNMENT OF ERRORS.

First. We assign for error the second conclusion of law,

that "this action is barred by the allowance made by the accounting officers of the Treasury under the private act of May 8th, 1820." (2 Con. Law, p. 13.)

Second. That the Court of Claims erred in giving judgment for the defendants when it ought to have been for the plaintiff.

BRIEF OF ARGUMENT.

I.

The Court of Claims having found by unanimous decision that there is a balance of $131,508.90 in plaintiff's favor, which still remains due and unpaid, if the action to recover this sum is barred by the allowance made by the accounting officers of the Treasury under the private act of May 8th, 1820, it must have been by compromise, and this defence ought to have been pleaded.

Kenyon *vs.* Sutherland, 3 Gilman, 99; Sinard *vs.* Patterson, 3 Blackf., 354; Hall *vs.* Flockton, 4 Eng. Law & Eq. 185; State Bank *vs.* Littlejohn, 1 Dev. & Batt. 565; Stark's Adm'r *vs.* Thompson's Ex'r, 3 Monroe, 302; Peace *vs.* Stennet, 4 J. J. Marshall, 450.

II.

A compromise in which a less sum is accepted instead of what is actually due is a contract, and as in other contracts, there must be a good consideration, and the minds of the parties must meet.

Wiley *vs.* Warden, 1 Williams, (Vt.), 655; Clark *vs.* Dinsmore, 5 N. H., 136, and cases there cited; Frentress *vs.* Markle, 2 Greene (Iowa), 553, and cases there cited; 5 East., 230; 16 Johnson, 86; Hardman *vs.* Bellhouse, 9 M. & W., 600.

III.

To make a compromise binding the party conceding away part of his rights must act freely, and duress will vitiate the contract; much more so when the conceding party is unlawfully imprisoned at the suit of the other party and purchases his freedom by the compromise.

2 Bac. Ab., 402, title Duress; Phelps *vs.* Zurschlag, 34 Texas, 371; Bane *vs.* Detrick, 52 Ill., 129; Bowker *vs.* Lowell, 49 Maine, 429; Hackett *vs.* King, 6 Allen (Mass.,) 58; Strong *vs.* Granniss, 26 Barb. (N. Y.), 122; Tilly *vs.* Damon, 11 Cush. (Mass.), 247; Brown *vs.* Peck, 2 Wis., 261; Breck *vs.* Blanchard, 2 Foster (N. H.), 303; Foshay *vs.* Ferguson, 5 Hill (N. Y.), 154; 2 Vernon, 497.

IV.

Where a party by compromise agrees to accept a less sum than what is actually due, the sum agreed on must be paid or the compromise is void.

Blackburn *vs.* Ormsby, 41 Penn. St., 97; Hearne *vs.* Kiehe, 38 Penn. St., 147; State Bank *vs.* Littlejohn, 1 Dev. & Batt., 565, and cases there cited; Higgins *vs.* Halligan, 46 Ill., 173 (pp. 176, 177.)

V.

If a doubt should exist as to the meaning of the act of 8th May, 1820, whether the allowance mentioned therein was intended to be final, or only a provisional allowance for the enlargement of Piatt till his accounts should be settled on just and equitable principles, and the balance, if any, in his favor, ascertained and provided for by law, the act and the proviso should be liberally construed in favor of the object of

relief, and decided according to that construction which is most consonant to equity.

8 Wheeler's Am. Com. Law, p. 142.
U. S. *vs.* Coose, 8 C. Cts., p. 1.
Kerlin *vs.* Bull, 1 Dal. Penn. R., 178.
U. S. *vs.* Bright *et al.*, Wharton's Dig., 708.
Bank of Am. *vs.* Fitzsimmons, 3 Binn. R., 356.

ARGUMENT.

It is to be regretted that the defence here set up was left to the discovery of the judges. It ought to have appeared of record by special plea.

I do not insist on formal pleas after the manner of Chitty, but by plea, answer, or notice in some form, we ought to have been informed that a *third* contract was to be set up. That Monroe's contract to pay for the rations whatever price they should be reasonably worth at the times and places of delivery, had been substituted by a new contract to pay less than half what the rations actually cost. If this had been done we would have been prepared with proofs and arguments to meet this new aspect of the defence.

But in truth, Mr. Attorney General never thought of this line of defence. There was no hint of it in his answer, his brief, or his argument. It was doubted or denied that John Armstrong's contract had been forfeited. It was doubted or denied that Mr. Monroe had given the assurances.

It was doubted or denied that verbal contracts were of any binding obligation. It was doubted or denied that receiving the rations and eating them up raised any legal obligation to pay for them unless they were furnished under a written contract.

These were the unwritten issues on which the cause was tried. That notwithstanding a new and binding contract, on a new and valid consideration, faithfully executed by the contractor, and an admitted balance of $131,508.90 still due and unpaid, the allowance under the act of 8th May, 1820, forever shut the door against this claim was a *brand new* idea to us all.

Taking for true the findings of the Court of Claims, we cannot escape the inquiry whether the Government can lawfully repudiate its own contracts after they are executed, or whether Congress can make a law impairing the obligation of such contracts? The letter of the Constitution, I know, applies the prohibition to State legislation alone, but the spirit is universal; and no legislative council, without *bad* faith, can destroy a contract made and executed in *good* faith. Concede to Congress, if you will, a sovereign right to be dishonest, there is no presumption of law that they will exercise that right. There is no leaning of the courts to the idea that Congress intends to do wrong. Nor is it to be presumed by the Court that Congress intended to withhold from John H. Piatt one dollar, much less $131,508.90, justly due to him. But we deny that Congress had any such intention, or that the private act of 8th May, 1820, admits any such construction.

First, then, as we claim, the act was preliminary and not final. The settlements ordered by the act were to be preliminary, and not final. There were no appropriations applicable to the claims of Piatt, and the act made no appropriations for that purpose. The act ordered the payment of no money, and authorized but one allowance, which required no money.

This act was an act for relief, and is entitled to a liberal construction in favor of the object of relief. It afforded no present relief except the enlargement of the man. That it contemplated further relief when the accounts should be settled and the balance ascertained cannot well be questioned, and this purpose of further relief was carried out by an act of appropriation in 1824, to the full extent to which the accounts had been settled.

Piatt's troubles about his accounts grew out of circumstances beyond human control. No man in his circumstances could have produced such vouchers as the rules of the Department seemed to require.

So long as he worked under the old contract no vouchers were required. The quantity of rations and the places of delivery were proved by the certificates of the receiving officers, and the price per ration was fixed by the written contract. When the new contract came into operation the price of the rations had to be proved in some other way. As things now are, where 40,000 barrels of flour and 10,000 barrels of beef or pork could be purchased in a day at Cincinnati, Chicago or Detroit, and carried by rail to the places of delivery, this might be done by vouchers. As things then were, this mode of proof was impossible.

Piatt fed the army from the original sources of supply, collected from a new and thinly-settled, country already nearly exhausted, by agents little versed in the art of keeping accounts. First-class accountants could not be had to canvass an exhausted frontier, buy a bullock from one man, a hog from another, a barrel of whiskey from another, and a sack of meal from another, and take vouchers and double vouchers for every item. And if this had been attempted,

how very easy it would have been for these agents to have robbed both Piatt and the Government. Imagine a single agent setting out on horseback in search of beef cattle. His horse must be shod, for which he pays fifty cents and takes an illiterate blacksmith's voucher for a dollar. He buys a bullock from an illiterate farmer, pays him fifteen dollars and takes his voucher for twenty. He hires a ragged boy, who can neither read, write or cypher, to drive the bullock to the corral, pays him 25 cents and takes his voucher for 75. And so of ten thousand expenses incidental and accidental to furnishing these supplies.

Moreover, Mr. Monroe did not agree to pay Mr. Piatt whatever price the supplies might cost him at Duck Creek, Leatherwood, or Neverdowell. His contract was to pay him whatever price they should be reasonably worth at the times and places of delivery. How else could this be ascertained but by the depositions of respectable traders engaged in the produce business, and this is precisely the manner in which Piatt proved his accounts?

In like manner the assurances of Mr. Monroe, constituting a new contract, or modifying the old, was proven by the testimony of one of yourselves, now no more among mortals, and others who were present and heard the assurances given.

These two accounts, amounting to about $200,000, were as well avouched as the circumstances would admit, and would have been settled without hesitation by men of plain common sense, untrammeled by Department law. I am not aware that anybody in or out of the Department doubted the justice and equity of these accounts, but the vouchers were not satisfactory, and the clerks, bewildered by some faint glimmerings of the law, could not see how an old written

contract could be substituted by a new and unwritten contract, and so they boggled on from year to year.

That the objections of the accounting officers to these accounts were technical merely is shown by the mandate of Congress to settle them on just and equitable principles, and the same mandate implies that there was proof enough for the purposes of equity, and that the justice of these accounts had never been challenged.

From the long and painful delay of justice and the horrors of the prison, Piatt had appealed to the justice and humanity of Congress. He did not go to Congress to compromise for his freedom. Congress did not ask him to purchase his freedom by compromise. Congress at that day comprised a host of the loftiest spirits that ever lived in human bodies—men who would scorn to pay a creditor a dollar less than what was justly due him. But under the circumstances what could they do for him? There were no appropriations applicable to his accounts, and they could make none till his accounts were settled; and so they ordered his accounts, not one, but all, to be settled on just and equitable principles as a preliminary step to final and complete relief. They could give him his freedom at once, because that required no money from the Treasury, and needed no appropriation; and so, as the session of Congress was drawing to a close, they ordered this moneyless allowance to give his freedom.

The balance of the commissariat fund during the war had been treated both by Piatt and the War Department as an advance on his contract, and belonged to his account as a contractor, and was properly payable out of what might be due him on his account as contractor, and so it was ordered to be *allowed* out of that account.

If Congress had intended this allowance to be a final discharge of all claims against the United States, doubtless they would have said so. There is nothing cheaper than words. It would have required but five more to have said "This allowance shall be final." But if it was intended to be final, to what end was the settlement? Did Congress order this account to be settled merely for the purposes of history, that posterity might know how deeply this man had been wronged? Or to ascertain how much the Government owed him, in order to right his wrongs by a future appropriation?

Considering that there was no appropriation of money to satisfy any allowance, the words *settle* and *allow* could mean no more and no less than this: To adjust the accounts and strike the balance between the parties, and make a limited allowance for Piatt's enlargement, which would require no money.

The word settle is used in various senses, but in whatever sense it was used in this act, it applied equally to both Piatt's accounts—the act makes no distinction. By the mandate of the law and their oaths of office, these accounting officers were bound to settle for every ration furnished by Piatt, and every dime paid by the Government. This much they were bound to do, whether the act was final or preliminary.

But again, to settle means to adjust an account and strike the balance. But it may mean both to adjust and pay the account. You order your clerk to settle my account when you are flush, I naturally expect payment. But if you order my account to be settled when you have not a dime in your pocket nor a dollar in bank, it is clear you only meant to have the account adjusted preliminary to payment in future; and now if there is a lingering doubt as to whether the act of

1820 and the settlement thereunder was final or preliminary, I invoke the testimony of the voucher for $63,620.48, which, like the unclean spirit mentioned in the Gospels, walked about in dry places, seeking rest and finding none for four long years, and returned to Congress at last for an appropriation to pay it off.

If the accounting officers had obeyed the plain mandate of the law, and first settled both these accounts on just and equitable principles, and then in obedience to the proviso, made a limited allowance from the account on assurances, sufficient to satisfy the demand of the United States, the account would have stood thus:

U. S. in account with J. H. Piatt, under assurances of the War Department.

Dr.—To 730,070.10 rations for northwestern army, at 45 cents per ration	$328,531 54
Cr.—By allowance at old contract prices	148,791 87
Balance on this account	179,739 67
" By allowance under proviso	48,230 77
Balance on assurance account	$131,508 90

In account for transportation, &c.

Dr.—To transportation, feeding refugees, &c.	$74,475 85
Cr.—By error corrected	10,855 37
Balance on this account	63,620 48
Total amount due Piatt	$195,329 38

But the accounting officers misapprehendred both the letter and the spirit of the law. In settling the account for trans-

portation they went beyond their instructions, in issuing a voucher for $63,620.48, instead of simply settling the accounts as required. In settling the account on assurances they came short of their instructions, in settling a part only instead of the whole as required. The first of these errors did great harm to the credit of Piatt, by sending this barren voucher kiting round the world for four years, without money to redeem it. The second error was fatal to his rights. If both accounts had been honestly settled according to law, no doubt both would have been honestly provided for by the appropriation act of 1824. But 520,000 rations were purposely left out of the settlement, and consequently $131,508.90 left out of the appropriation.

Suffer me to repeat. When Congress ordered these accounts to be settled, they had an eye to a future appropriation for every dollar the United States owed Piatt. Such appropriation could not be made without knowing how much was due him. This could not be known till his accounts should be settled. It was too late in the session to receive the report of the accounting officers, and pass an act of appropriation for Piatt's ultimate relief; and he must remain in bondage another year unless something could be done for his enlargement. The process was simple and easy, and would require no money and no appropriation. It was but to pass to his credit the sum for which he had been arrested, and charge it to his account for rations under assurances.

Three things were aimed at in this act. First, to release Piatt from imprisonment. Second, to emancipate the accounting officers from the thraldom of red tape. Third, to determine by a just and equitable settlement of all the accounts, how much, if anything, was due to Piatt, in order that an appropriation might be made for his final relief.

The first and second objects were accomplished; but the third was defeated by a stupid misunderstanding of the act by the accounting officers.

First, they mistook for final, an act which Congress intended to be preliminary only, and this leading error, like the first link of a chain, drew after it all the others. Second, they imagined themselves authorized to close up all the affairs of Piatt. Third, they imagined they had a right to make drafts on the Treasury when there were no appropriations for their payment. Fourth, they thought, or seemed to think, that Piatt's account for rations was not to be paid at all, and that to settle it on just and equitable principles meant to deduct from the account a specific portion of the rations, sufficient at a fair valuation to cover $48,230.77, which they were required to allow; settle so much of the account, and drop out all the residue—520,000 rations, and $131,508.90, and so balance the account between John H. Piatt and the United States.

If Piatt's account had been for 1,500 cavalry horses, regularly delivered, inspected, branded, ridden to death, shot down in battle, wasted and destroyed in the military service of the United States; and the accounting officers, instead of accounting for the whole 1,500, had counted out a "specific portion," say 500 spanking bays, worth $48,230.77, and settled for these 500 only, leaving out of the account the remaining 1,000, and at the time of the settlement there had remained one surviving horse, he would have laughed a horse laugh loud enough to wake the seven sleepers, at the idea that this was a just and equitable settlement of the account.

Can Mr. Attorney General draw a distinction between this and the so-called settlement of the account on assurances?

We seek to unsettle nothing that ever was settled. The alleged balance of $48,230.77, whether bogus or genuine, is settled, and so let it rest. The account for transportation is settled, and whether fairly or unfairly, so let it rest. His own final account is settled, and so let it rest forever. But when we find hidden away in the archives of the nation a just and meritorious account for 520,000 rations never settled and never paid, justice to the memory of a departed patriot, justice to his surviving heirs—more than all, justice to the United States of America—demand that better late than never this debt should be canceled.

We may, notwithstanding, refer to the history of this settlement as one of the interpreters of the act of 1820. It was a settlement between a money-borrowing and interest-paying man and a money-borrowing and interest-paying government. The unquestionable debt for transportation was $63,-620.48. Five years' suspension of this account was a dead loss to Piatt and a clean gain to the United States of $18,-086.14.

It is an adjudicated fact, not to be blinked now, that on assurances of indemnity by the War Minister of the United States, Piatt had expended in the purchase of food for the Northwestern army $179,739.67, over and above all that had been repaid. Five years' suspension of this account was a dead loss to Piatt and a clear gain to the United States of $53,921.90. In addition to these hardships is it conceivable that Congress, taking advantage of this man's poverty, imprisonment and desperation, deliberately intended to pay this debt of $179,739.67, with $48,230.77, a sum less by $5,691.13 than what Piatt had lost and the United States gained in the item of interest by vexatious delay?

Two of the judges of the Court of Claims considered themselves bound by what they conceived to be the intention of Congress, but in their theory of intention they convict that body, not only of gross injustice, but of a monstrous solicism, make them say substantially to the accounting officers, "Gentlemen, we recognize both the existence and obligation of Mr. Monroe's assurances, and Mr. Piatt's right to indemnity. Take his account and settle it on *just* and *equitable* principles. Give him *just* and *equitable* credit for every ration he has furnished under the assurances. Charge him *justly* and *equitably* with every dime he has received for such rations. State the balance *justly* and *equitably* due him, and then pay him off, once for all, now and forever with a moneyless credit of less than one-third of what you find to be *justly* and *equitably* due him, and let him and his creditors, his heirs and assigns, forever whistle for the balance."

Did Congress mean this, or did both the accounting officers and the judges misapprehend the meaning of Congress? That such a monstrous idea was present to the minds of Congress is unworthy of any sane man's belief. Congress knew full well that such State policy could be productive of nothing but mischief; that such treatment of men who have saved our armies from defeat and our country from ruin would in troublous times instigate swindlers to cheat the Government in self-defence; acting on the old proverb, if you sup with the devil you must have a long spoon.

If we could persuade ourselves that Congress intended to do this great wrong, they could not do it without the voluntary acquiescence of Piatt, and that is wanting; and in the absence of proof that he understood the act in the same sense in which these judges understood it, and so understanding

it gave it his approval, this defence must go to the wall. This court will never tolerate the impairment of the validity of contracts, not even in Congress, after they have been faithfully executed.

If it should be admitted that the allowance under the act of 8th May, 1820, was mutually agreed upon as a discharge of the whole debt. What of it? Piatt was not in a condition to make a binding compromise. He was in prison at the suit of the United States, and his enlargement was the consideration for which the compromise was made. True, he was not within the walls of a prison-house, but he was in the custody of his bail, liable to be surrendered at any moment, and as much restrained of his liberty as if he had been arrested for robbing the mail and held to bail.

By what right was this man arrested? Let us forget all the progress of the last fifty years and go back to a time when imprisonment for debt was a common remedy. Such things in their day were hard enough. But here was the novel case of the debtor casting the creditor into prison. At the time he was arrested the United States had in the Treasury of his money $195,129.38 over and above all the claims of the United States. They had been his debtor all along, under the old and under the new contract. Had let his drafts for $210,000 go to protest. He and that grand old man, John McLean, had found the War Minister of the United States sitting in the ashes of the burnt-out Capitol in an agony of despair over a bleeding country and an empty Treasury. "He admitted to Piatt the inability of the United States to comply with the terms of the contract on their part, both as to money already due and as to money which might become due for future supplies;" appealed to his patriotism for help,

and promised him indemnity. He pledged and lost all he had to alleviate the poverty and avert the ruin of his country, and imprisonment was his reward.

But we must not allow the hardship of the case to lead us away from the logic of the argument. Piatt owed the United States nothing. They owed him for money laid out and expended after deducting the sum for which he was arrested, $195,129.38, and in justice and equity for five years' use of his money $58,541.81 more. He was in no sense a debtor to the United States, and yet the United States arrested and imprisoned him for debt; and, with a *capeas ad respondendum* on his back and a *capeas ad satisfaciendum* staring him in the face, he stood like a sheep dumb before his shearers on the 8th day of May, 1820, when the compromise is supposed to have been made.

I trust I need not produce an authority in this court to show that when a party is unlawfully arrested and held to bail, and purchases his enlargement by a ruinous compromise, such compromise is of no legal obligation whatever. If the Government had paid him his money in full, and on his way home a band of freebooters had arrested him, and, with his hands tied behind his back and a knife at his throat, he had compromised for his freedom by giving them $131,508.90, the legal obligation of the compromise would have been the same—the moral obligation perhaps higher.

But there was nothing in Piatt's case looking or even squinting towards a compromise. There was no "amicable agreement between parties in controversy to settle their differences by mutual concessions." There was no submission and award. There was no accord and satisfaction, or anything of kin to a compromise.

Mr. Attorney General thinks the claim of Piatt is barred by submission, because it was held that the claim of Adams was barred by submission. I should agree with him if there was an important analogy between the cases. As it is, he might as well accuse Piatt of starving the North ~~American~~ western army because it was held that Captain Wirz starved the prisoners of war at Andersonville.

The two cases differ in every respect, but I have only time to mention one. I am not aware that the commission who arbitrated the claims of Adams, after the claims were submitted and the evidence heard, selected "a certain specified portion" of the boats he had built, say one-third, ascertained the value of this "specified portion," and based their award on this alone, leaving the residue, say two-thirds, of the boats out of the account and out of the award. I am aware that when Piatt's account for 730,070 rations, furnished on the assurances of the Secretary of War, was presented and proved according to the principles of justice and equity, the accounting officers did select "a specified portion" of these rations, to the number say of 210,000, based their settlement on this "specified portion" only, leaving 520,000 rations, worth, at their own estimate of value, $131,508.90, entirely out of the account. Unless Mr. Attorney General can bridge this chasm, I can travel no further with him on the line of analogy between Piatt and Adams.

To what extremes of folly the wholesome rulings of this court are perverted by mixing discordant facts, and calling things by new names. The defences in the case at bar come down to this. I owe a banker $100 for a suit of clothes purchased of him when he was only a tailor. To help him when he was poor I deposited $100,000 in his bank, and he has

used it for five years without interest. My tailor's bill is getting old and ought to be settled, and so he sues me, and by *capeas ad respondendum* puts his old friend in jail. BUT THIS IS NOT DURESS. I give special bail, go to the bank and demand my money. THIS IS A SUBMISSION. The paying teller refuses to give me my money. THIS IS AN AWARD. The banker orders his clerk, for shame, to give me a credit sufficient to cancel the tailor's bill, and let me have my liberty. THIS IS A COMPROMISE. Besides the tailor's bill, the cashier allows me a small part of what is due, and gives me a check on a bank where there are no deposits to meet it, not likely to be made good for four years to come. THIS IS AN ACCORD AND SATISFACTION.

One thing I regret to find in Mr. Attorney General's brief. He says Piatt "was indebted to the Government as a disbursing officer in the sum of $48,230.77, for which a *capeas* issued and he had been arrested." There is no authority in the record for this attack on the memory of this departed patriot. He was no defaulter—never owed the Government a dime as a disbursing officer. The Court of Claims speaks only of an allegation, never proved and never provable. If our petition is taken for proof of this indebtedness, let the whole story be taken together. The petition says that "it was the practice and usage of the Department to make advances to army contractors, from time to time, of funds sufficient to enable them to purchase and forward the necessary supplies," (P. R. 2) and that "when the said John H. Piatt entered on the execution of his said contract, there was due from him to the United States $46,112.56, for money remaining in his hands as commissary, *which he held and treated as an advance.*" (R. P. 3.)

Whether the clerks neglected to transfer this balance from his account as commissary to his account as contractor, I do not know or care to inquire. Suffice it to know that he spent this balance, and thirteen times as much more, in purchasing food for the Northwestern army. That the Government was a penniless mendicant, feeding its army on his bounty, and begging for time to pay its debts. That his accounts were regularly presented every quarter; and then it follows that these officials brought him in debt simply by refusing to pay him his dues.

I have hitherto denied that Congress intended to give, or that Piatt intended to receive this settlement and allowance as a finality, because it seemed to admit that the national council of the United States was unjust, and that Piatt was a lunatic. But let it be admitted, if you will, that both parties intended it, as an accord and satisfaction of all claims, and what of it? The Government violated an indispensable condition of the accord. The $63,620.48 was not paid, or only paid, under the act of 1824, after Piatt was dead and his estate had lost and the United States had gained $15,-268.91 more by the delay. If this was an accord, it was an accord *without satisfaction.*

The settlement and allowance of this account, instead of doing him any good, proved a snare to him. He thought he had secured for his creditors $63,268.91, and distributed it among them by assignment; but when they found there was no money for them their disappointment turned to rancor, and finished his ruin already foredoomed by his unlawful arrest.

Down to this time he had retained the confidence of the public in his honesty. They knew he was largely indebted in Ohio. The miracle of feeding an army with no other

capital but his own credit and Monroe's assurances could not have been performed without incurring a large indebtedness at home. Long delay had made his creditors uneasy, and when the bruit of his defalcation and arrest by the Government filled the ear of all Ohio, his credit, his reputation, himself, all went down into a gulf of irretrievable ruin. Honorable gentlemen in Congress tried to help him out, but it was all too late. It was like exploring a sunken ship for the dead bodies of the crew. His miserable body was gotten out, but his good name, the immediate jewel of his soul, was lost. This barren voucher with which he sought to appease his creditors proved fruitless in their hands, and they in turn pounced upon him and cast him into prison, and here, in the capital city, without money enough to purchase a winding-sheet, he lay down and died on the prison bounds, the victim of injustice and ingratitude.

Take this man's case for all in all, I know of no parallel in history since Bobadilla sent Columbus home in chains.

A word more, and I have done. In our petition we claim interest on this debt. The questions as to that I submit without argument. If it had been a transaction between man and man, on the principles of justice and equity, we could recover $631,405.45. Nine years' delay in the paym without interest, of $63,620.48, was a dead loss to us and a clear gain to the United States of $34,355.05. Fifty-eight years' delay in the payment without interest, of $131,-508.90, is a dead loss to us and a clear gain to the United States of $465,041.50, so that after paying us $131,508.90 the United States will still have in the Treasury of our money $499,896.55.

If we have no legal right to recover interest, then, in the

name of Hannah C. Grandin and the numerous heirs of John H. Piatt, I give the United States joy of this large deposit; but in the name of justice I demand the little balance of $131,508.90, found by a verdict of the Court of Claims to be still due and unpaid.

WILLIAM JOANSTON.
BEN. M. PIATT.

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In the Supreme Court of the United States.

OCTOBER TERM, 1874.

HANNAH C. GRANDIER, *Administratrix of John H. Piatt, deceased, Appellant,*
vs.
THE UNITED STATES, *Defendant in Error.* } No.

BRIEF FOR DEFENDANT IN ERROR.

In 1819, John H. Piatt had several claims against the Government. He had furnished transportation, he had furnished rations under a written contract with the War Department, and he had furnished rations under verbal assurances of the Secretary of War.

He also was indebted to the Government as a disbursing officer in the sum of $48,230 77, for which a capias issued and he had been arrested.

His claim against the Government was in dispute. He could not get it allowed. He applied to Congress, and April 5, 1820, the Judiciary Committee of the Senate reported adversely upon it.

Being under arrest, an act was passed May 8, 1820, for his relief, requiring the officers of the Treasury Department to settle his accounts on equitable principles and to recognize the assurances of the Secretary of War, about which there had been previous doubts. The amount to be allowed under these assurances was limited to a

sum not to exceed the amount for which suit had been commenced against Piatt. There was no limit to any claim he might make except the one upon the assurances:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to settle the accounts of John H. Piatt, including his accounts for transportation, on just and equitable principles, giving all due weight and consideration to the settlements and allowances already made, and to the assurances and decisions of the War Department: *Provided*, That the sum allowed under the said assurances shall not exceed the amount now claimed by the United States, and for which suits have been commenced against the said John H. Piatt."

The accounting officers found that there was due him under the assurances the sum of $48,230 77, and the account against him at the Treasury Department was settled under the provisions of this act by the Third Auditor passing to his credit this amount and cancelling his indebtedness.

He accepted this settlement without protest.

Under this act, the accounting officers were required to settle all Piatt's accounts. Whatever was in dispute or unsettled between the Government and himself must thereunder be settled.

It was a settlement. Congress meant that his claims should be found and that this finding should be final. When the balances were found the claims were liquidated, and when the balances were paid or set off the claims were satisfied.

The fixing of the maximum under the assurance is conclusive that Congress intended it to be a payment

in full and compromise of the disputed claims under the assurances.

Congress fixed no limit to his claim, except under the assurances. So his release from prison could not have been the only object of the statute.

He went before the accounting officers and presented his proofs, and made his claims much in excess of the amount awarded him. The settlement was made upon proofs, and a further sum of $63,620 48 was found to be due him. He did not protest at this or any stage of the proceeding.

In 1824, Congress appropriated the $63,620 48, to pay in accordance with the settlement under act May 8, 1820. Nothing was then said by anybody of the award under the assurances. The amount allowed had been accepted by Piatt and passed to the payment of a debt which he owed.

A construction by Congress of the act of May 8, 1820, (found in the report of the Select Committee, to whom was referred the memorial of the legal representatives of John H. Piatt, upon which the appropriation of $63,620 48 was made, read January 9, 1824, 18th Congress, 1st Session,) shows that there was no thought either in the representatives of Piatt or in Congress that the claim under the assurances had not been finally settled.

"Under this act, of the 8th May, 1820, the accounts of John H. Piatt were submitted to the proper accounting officers of the United States.

* * * * * * *

"This account, with the remarks of the Third Auditor, was submitted to the Second Comptroller, who disallowed some of the debits, and allowed several additional credits, and finally, as he is authorized by law to

do, settled the account, making a balance due to Mr. Piatt of $63,620 48. Of this settlement, and the balance found due by it, Mr. Piatt obtained an official certificate, to which, of course, he was entitled.

* * * * * * *

"The general question presented is, whether an appropriation ought to be made to pay the balance thus found due, and now standing to the credit of John H. Piatt? And this may be considered under two views.

* * * * * * *

"For the purpose of ascertaining the balance of the account, this settlement would be deemed conclusive—so conclusive that, if there had been an appropriation, or if there had been money at the disposal of the Department for the payment of 'arrearages' under the general authority for that purpose given, it is believed, from the statement of the Second Comptroller, that the balance would have been paid without hesitation; and, of course, it is to be understood that the settlement leaves no question as to the debt.

* * * * * * *

"The object of the act seems to have been to extend to John H. Piatt the benefit of two distinct provisions:

"1. That his accounts should be settled upon equitable principles; and

"2. That he should be allowed a credit for the 'assurances.'

* * * * * * *

"The only limit assigned is that which is contained in the proviso, and that is expressly and specifically applied to the head of 'assurances,' and to that alone, leaving the others wholly unlimited. Can it, then, be extended to the other heads of credit?

* * * * * * *

"The plain meaning seems to be, that Mr. Piatt was not to be deprived, by the new grant, of the benefit of any former allowances, settlements, or decisions. And this construction is fortified by the fact that the act was deemed necessary to give Mr. Piatt the benefit of the 'assurances,' which implies that this could not be

done without the authority of a special law, and, therefore, further implies that it had not been done before.

* * * * * * *

"All these circumstances, duly considered, the committee are of opinion, that the balance found by the Comptroller is justly due and ought to be paid.

* * * * * * *

"In that opinion the committee fully concur, for reasons already stated; and the conclusion they are brought to is therefore inevitable, that, as between the United States and the assignees of John H. Piatt, the settlement ought to be decisive.

"The committee, therefore, ask leave to report a bill."

An allowance by the legislature in full, when accepted by claimant, is an estoppel of further claim.

Sholes *vs.* The State, 2 Chand., 182.

Calkins *vs.* The State, 13 Wisconsin, 389.

It is clear, from the wording of the act and from the circumstances which called for its passage, that this sum was intended by Congress as full payment of the claim under the assurances.

"The word settle has an established legal meaning, and implies the mutual adjustment of accounts between different parties and an agreement upon the balance. When, therefore, it is averred that the committee settled with the plaintiff, we think that sufficiently avers his consent, because without his consent, express or implied, there could be no settlement."

Baxter *vs.* Wisconsin, 9 Wis., 44.

See, also, 11 Alabama, 419.

This was offer of settlement by Congress to Piatt of a disputed claim. He could accept its offer or not as he chose.

That he had no other remedy at the time does not affect the question.

Mason *vs.* United States, 17 Wall., 67.

He presented his proofs, made hisclaims, and accepted the allowances without protest. He is barred by the submission of his claims.

Adams's Case, 7, 479.
United States *vs.* Child *et al.*, 12 Wall., 232.
United States *vs.* Justice, 14 Wall., 535.
Mason *vs.* United States, 17 Wall., 67.

There was no duress. Piatt could have demanded that any part of the claim upon which Congress placed no limit as to proof and no restriction as to amount, and not connected with the assurances in any way, should have been applied to his indebtedness; in fact, a part of it was so applied by the accounting officers to that portion of his indebtedness which had not been included in the pending suits. (Record, p. 6.)

No compulsion was exercised over him at any stage of the proceedings.

GEO. H. WILLIAMS,
Attorney General.

JOHN GOFORTH,
Assistant Attorney General.

Supreme Court of the United States.

OCTOBER TERM, 1874.

No. 222.

HANNAH C. GRANDIN, Administratrix of JOHN H. PIATT, deceased, Appellant,

vs.

THE UNITED STATES.

THOMAS WILSON,
Attorney for Appellant.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1874.

No. 222.

HANNAH C. GRANDIN, Administratrix of JOHN H. PIATT, deceased, Appellant,

vs.

THE UNITED STATES.

STATEMENT OF THE CASE.

There is no dispute about any of the facts in this case. They were all found by the Court of Claims in our favor. As found by the court, they require a judgment in favor of the plaintiff. Briefly stated, they are as follows:

1st. The making of the written contract of January 14, 1814, between the Secretary of War and John H. Piatt, by which Piatt agreed to purchase and deliver the entire rations required for the Northwestern Army, and the United States agreed to pay to him a specified price per ration for those delivered at specified places; the number of rations and places of delivery to be determined by requisition of the Commanding General, and the United States agreed to advance to him the necessary funds with which to make the purchases. (1st finding of fact, p. 11.)

2d. The failure of the United States to comply with the obligations of this contract; that on January 1, 1815, it was in default in the sum of $210,000 for rations already fur-

nished, and the Secretary of War confessed the inability of the United States to perform the contract, as to money which might become due for future supplies. (2d finding, p. 12.)

3d. That at this time, and under these circumstances, the original written agreement was enlarged and extended, or changed; or else was forfeited and abandoned, and superseded by an agreement in parol made between the Secretary of War and Piatt, which was rendered necessary by a pressing military exigency. The only effect of this parol agreement was to enlarge, extend, or change, or, if forfeited and abandoned, to supersede the written contract in two particulars. First, it changed the price of the rations from twenty cents to a *quantum meruit*, *i. e.* to "whatever price they should be reasonably worth at the time and place of delivery;" and second, that the United States, "instead of paying, as required by the terms of the original contract, should defer payment until such time or times as they should have the requisite funds." (3d finding, p. 12.)

Solomon's case; 19 Wallace, 19.
Emerson *vs.* Slater, 22 How., 41, and cases cited.

This was a mutually binding obligation, the latter a good consideration for the benefits of the former.

4th. Under the parol agreement, or under the written contract, as enlarged, extended, or changed by the parol agreement, Piatt furnished 730,070.10 rations, the fair and reasonable price of which was 45 cents per ration, amounting to the aggregate of $328,531.54. Of this sum he was paid, first, only the 20 cents per ration fixed by the written contract, $148,791.87; and second, he was allowed by act of Congress $48,230.77, "leaving a balance of $131,508.90, which still remains due and unpaid." (4th finding, p. 12.)

These facts show the contract requiring the rations, the

agreement to pay their reasonable worth; their delivery by Piatt; the amount which they were worth; the amount he has received, and the balance still due and unpaid.

In these findings the court was unanimous. On these facts the plaintiff is undoubtedly entitled to judgment, unless some legal defence is interposed.

This was fully conceded by the court below when it stated the following conclusion of law:

I. The parol agreement, entered into by John H. Piatt and the Secretary of War, after the forfeiture and abandonment of the original written contract, being a new contract upon a new consideration, was valid, and, under such agreement, the defendants became indebted to Piatt for the fair and reasonable valuation of the rations furnished under it, and for the balance of $131,508.90.

Two of the judges of the Court of Claims were of opinion that such a defence existed in the act of Congress of May 8, 1820, (6 Stat. L, p. 245,) in the words following:

"An act for the relief of John H. Piatt."

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to settle the accounts of John H. Piatt, including his accounts for transportation, on just and equitable principles, giving all due weight and consideration to the settlements and allowances already made, and to the assurances and decisions of the War Department: *Provided*, That the sum allowed under the said assurances shall not exceed the amount now claimed by the United States, and for which suits have been commenced against the said John H. Piatt."

The court being equally divided as to the right of the claimant to recover, rendered a judgment *pro forma* against her, and stated the defence in the following conclusion of law:

II. But this action is barred by the allowance made by the accounting officers of the Treasury under the private act May 8, 1820, which must be construed to have been intended by Congress as a settlement of all claims against the defendants.

ASSIGNMENT OF ERRORS.

This conclusion of law and the rendition of judgment against the claimant, and in favor of the defendants, are the only errors assigned.

ARGUMENT.

The single legal question is thus presented for the decision of this court, whether this act of Congress affords a legal bar to the recovery by the claimant of moneys otherwise admitted to be due to her?

I make two points against this proposition:

1st, the act itself does not show such an intention on the part of Congress, nor does its language warrant such a construction; and, 2d, the circumstances in which Piatt was placed at the time, prevent any such legal effect, even if the intention were clearly expressed in the act.

I.

The act itself does not show such an intention on the part of Congress, nor does its language warrant such a construction.

1. If such an intention had existed on the part of Congress, it would have been very easy to have used apt words to have expressed it. Nothing is more common in acts of Congress passed for the relief of private claimants than the words "in full payment," or, "in full satisfaction" of his claim, &c. It has been done in many hundred cases. If

these words had been inserted, this meaning would have been made clear, and Piatt could not have misunderstood it.

2. Instead of an intention on the part of Congress that the act of May 8th, 1820, was a settlement of all claims against the United States, it is evident that its intention was distinctly the contrary; for, under the act of 1820, the accounting officers could allow only $48,230.77, and no more; the proviso of the act limited the relief to be granted to Piatt to that sum, because that was the amount claimed by the United States from him, and for which suits against him had been commenced.

Instead of being or pretending to be a full and complete settlement, which should include "all claims against the defendants," the allowance to be made thereunder was expressly limited by the proviso not to "exceed the amount now claimed by the United States, and for which suits have been commenced against Piatt."

If the act stood without the proviso, and Congress, in referring these accounts to the accounting officers, had authorized and required them to make the settlement "on just and equitable principles," and had left the officers free to make a full and complete settlement on the principles declared, then it might be said that this should be construed as a settlement of all claims against the defendants. But with the proviso attached which limited and restricted the allowance not to exceed a certain fixed sum, I do not see with what show of reason the claim can be made.

When the accounting officers proceeded, under the act of 1820, to settle Piatt's accounts, their first allowance in his favor was for transportation, &c., showing a balance due him on that account of $63,620.48. This amount was not paid to him under the act of 1820, nor could it be paid to him by reason of the proviso, nevertheless the accounting officers stated the account in this wise: (Finding of fact, record, top of page 13.)

"First. The accounting officers allowed him a credit of $74,475.85 for transportation and rations furnished by him for the use of citizens and Indians, not embraced nor included within either of the contracts or agreements before described, from which credit certain deductions were made, leaving a balance of $63,620.48."

The $48,230.77 was allowed to him, and carried to his credit, under what is stated in the findings by the court, as the second branch of the settlement; but the $63,620.48 remained as stated by the accounting officers and continued unpaid. Now, I say it is evident that Congress never intended that the act of 1820, and the $48,230.77 allowed under it, should be construed as a settlement of all claims which Piatt had against the United States; because, the next Congress, May 24, 1824, (6 Stat. L., p. 314,) appropriated and paid to Piatt or to his administrators and assigns (Piatt had died in the meantime,) the sum aforesaid, of $63,620.48, and under it, the same was paid. (6th finding, p. 13.) It cannot be possible that Congress should have intended or meant, in 1820, that the allowance of $48,230.77 should have been a settlement and payment in full of all claims against the United States, while in 1824 they make a further appropriation and payment to him of $63,620.77, which payment was based upon the same settlement.

If the act of 1820 is to be construed as a settlement against the present claim, it would have been construed equally as a settlement against the claim of $63,620.77. And that it was not so construed by Congress and administrative officers of the Government at that time, is evident—not by the accounting officers, or they would never have made and completed the settlement showing the further indebtedness of the United States to Piatt, in the sum of $63,620.48—nor by the Congress, or it would never have made the further allowance and appropriation of the act of 1824.

3. While Congress was examining this claim prior to the

passage of the act of 1824, and pending the investigation, the select committee having the matter in charge called upon the Third Auditor and Second Comptroller for a statement of the amount still due Piatt under the "assurances," as they were called, but which was really the parol agreement, extending or enlarging the original written contract, and which is described in third finding of fact, p. 12.

The statement of the accounting officer in reply to this request is to be found in the record, pp. 7, 8. It shows an aggregate number of rations issued after the making of the parol agreement of 865,934.

A portion of these, 135,863.09, had been issued outside of the contract, and had been settled and paid for at their reasonable cost. (These figures are given in the record, at the top of page 8, as dollars, which is a mistake in copying. They should be rations.)

The statement concludes thus :

The remaining rations, 730,070.31, were furnished under the parol agreement or "assurances," and their reasonable cost was stated at 45c. the ration, amounting to $328,531 54

From which deduct the amount of the original contract price paid..... ..... 148,791 87

Leaving a balance of..... $179,739 67

But of this there was to be applied to the debt for which Piatt was arrested.. ..... 48,230 77

Which left a balance due to him of..... $131,508 90

It must be clear to the mind of any one that neither the committee which asked, the accounting officer who gave, nor the Congress which received, this statement in 1824, could ever have intended that the act of 1820, which was then fresh in all their minds, and under which they were acting, should be construed as a settlement of the claims Piatt had against the defendants, else why should they continue their

examination?—why continue making and receiving statements?—why should Congress have raised or appointed a select committee to which it referred this matter? If the whole matter had been settled—if the act of 1820 was intended and was to be construed as a settlement—why, I ask, did they continue with their investigations, and especially why did they appropriate and pay the $63,620.48 in 1824?

If this was their intention in 1820, their action in 1824 was simply nonsense, and those engaged in this business, were men of too large mental calibre to merit such an epithet.

4. If it be said that the act of 1820, specifically referred to, and included the assurances or parol agreement made with the Secretary of War, and that it contemplated an allowance in his favor, under and upon said assurances, and that, therefore, when such allowance was made it became binding as a settlement. I answer that objection as follows:

That the act of 1820, specifically and in terms, directs the settlement of Piatt's "accounts for transportation," and those accounts for transportation were included in the statement made by the accounting officers; but so far from this being construed as a settlement of this account, even though specifically mentioned in the act of 1820, the next Congress made the appropriation for its payment.

If any account could have been considered settled by this act, it would have been these accounts for transportation, for not only were they included in the settlement made by the accounting officers, under the act of 1820, but those officers were specifically directed by that act to settle those accounts. Yet we have seen that no one at that time construed the act and this action under it to be a settlement of these accounts. On the contrary, the Congress accepted the statement made by the accounting officers, and appropriated the necessary money to pay the accounts for transportation.

5. But the accounting officers, in their statement or settlement made under the act of 1820, did not *pretend* to state or settle *all* of Piatt's claims against the United States.

A copy of the allowances made under the assurances or parol agreement is set forth in the record, (p. 6.) By this it will be seen that they allowed him for only 849 barrels of flour delivered at Lower Sandusky, and some beef delivered at Urbana and Detroit.

The total amount carried to his credit in this statement was $48,243 84.

This was in excess of the amount for which suits had been commenced against him, by $13 07.

I speak now of the statement or settlement or allowances made by the accounting officers under the act of 1820.

Now, I say, all that was settled in this statement was the 849 barrels of flour, and the beef delivered at Urbana and Detroit. Those rations are stated in this account; they were allowed to Piatt, and passed to his credit; they are settled and determined. So far as they are concerned, I suppose Piatt could not go behind the settlement. The amount which they cost him over what he was allowed he cannot now be heard to claim, because they were settled and paid for. This amount, $13 07, is a total loss to him. It was included in the settlement. But I call the attention of the court to the fact that *not another barrel of flour, not another pound of beef, was included in the settlement.* Not a dollar of the $131,508.90 now claimed, (4th finding of fact, p. 12,) not a dollar of that reported by the Second Comptroller to Congress, (p. 8,) was included in that settlement. How, then, is it possible that they could have been settled. The 849 barrels contained in the statement of the accounting officers of flour may have been settled by that statement, but the remainder of the 730,070.10 rations, which was *not contained* in the statement of the accounting officers, can never be construed to have been thereby settled. These remaining rations could not have been settled by a statement in which they never

appeared, nor can they be construed to be covered by or included in a settlement into which they never entered.

That they were not included in the statement or settlement made by the accounting officers under the act of 1820, is clearly shown in the finding of facts.

The fourth finding (p. 12) sets forth that, under the parol agreement, Piatt furnished and delivered to the defendants 730,070.10 rations, the fair and reasonable value of which was 45 cents the ration, amounting in the aggregate to $328,531.54. The officers of the Treasury having no knowledge or evidence of the parol agreement, under which the rations were furnished, allowed only the price designated in the original written contract, amounting to $148,791.87, and leaving due a balance of $179,739.67. Then follows the act of 1820, under which this balance was reduced to $131,508.90.

The fifth finding (top of p. 13) says, "under and in pursuance of this act, the accounting officers of the Treasury settled the accounts of Piatt as follows:

First, allowing him a balance of $63,620.48, "for transportation and rations furnished by him for the use of citizens and Indians *not embraced within either of the contracts or agreements* before described," and which amount could not be paid under the act of 1820, because of the proviso, and which was not paid until the act of 1824; and,

"Secondly, they allowed him a credit upon a *certain specified portion*;" that is, the 849 barrels of flour and the beef delivered at Urbana and Detroit, and not the whole amount of the 730,070.10, "of the rations delivered under the parol agreement, before mentioned, *equal to the amount then claimed by the United States in the suit against him*, to wit, $48,230.77; and such credit was ascertained in the following manner: They first estimated the fair and reasonable value of the "*specific portion*" (that is, the 849 barrels of flour) "of the rations thus referred to; they then deducted there-

from the price per ration already paid to him, and from the balance *thus ascertained* they made a further deduction, ($13.07,) sufficient to reduce the amount of the credit to the said sum of $48,230.77, as required by the proviso to the private act."

So I say that the act of 1820 cannot be, and never was intended by Congress to be, a settlement of all of Piatt's claims against the defendants.

Because (1) the act does not say so, and if such had been the intention apt words could have been used to declare it.

(2.) The proviso attached to the act limits the settlement, prevents it from being full and complete, and prescribes a narrower or smaller amount of relief.

(3.) The accounting officers of the Treasury did not so regard it, for they proceeded to state his accounts, and allowed him, in that statement, the item of $63,620 48, while the only relief which could have been afforded him, under that act, was for the sum of $48,230 77, for which a suit had been commenced.

(4.) Upon the report of the accounting officers, the subsequent Congress appropriated and paid the above sum of $63,620 48.

(5.) The accounting officers did not *pretend* to state or settle *all* of Piatt's claim. They only stated 849 bbls. of flour—not 730,070.10 rations.

These are cogent reasons, which ought to satisfy any legal mind that the act of 1820 must *not* "be construed to have been intended by Congress as a settlement of all claims against the defendants."

My own opinion of the true construction of this act, and of the intention of Congress in passing it, is as follows: Congress knew that a balance stood on the books of the Treasury

against Piatt for moneys due from him as an officer; that a suit or suits had been commenced by the United States to recover that balance; that he had been arrested, thrown into prison, and was then on bail; that he claimed that a true statement of the accounts between him and the United States, it would be shown that he was not indebted to the United States, possibly the United States would be found to be indebted to him. Congress, without expressing any opinion upon the facts of the case, enacted that the accounting officers should settle his accounts "on just and equitable principles, giving all due weight and consideration to the settlements and allowances already made, and to the assurances and decisions of the War Department;" and if, upon the making of this settlement or statement it should be found that Piatt was not indebted to the United States, that there was enough coming to him upon these accounts, "assurances," transportation and the like, to offset the balance claimed from him in the suits commenced, then that this balance should be cancelled and the suits dismissed and he discharged from jail; but if these accounts should not be sufficient to entirely offset this balance, then it should do so *pro tanto*, and upon payment of the remainder he should be discharged from jail.

The purpose of Congress seems to have been much the same as when it passed the act for the relief of William Peck, (6 Stat. L., p. 109,) and of which this court says, in Hunter *vs.* United States, 5 Pet., 185, "From this proviso it clearly appears that the release from imprisonment was the only object of the statute, and a proper construction of it does not release the judgment."

Although the two acts are not at all alike, yet the same idea or purpose seems to have inspired both. Peck was indebted to the United States, was sued, judgment recovered against him, and he imprisoned for the debt. Congress declared that he should be released from imprisonment, provided, first, that he should assign all the property "which he may now own or be entitled to" to the United States;

and, second, that any property which he might hereafter acquire should be liable to be taken, &c.

This court say, ibid, "That the same rules of contract are applicable where the Sovereign is a party as between individuals is admitted; but the right of the Sovereign to discharge the debtor from imprisonment without releasing the debt is clear."

The sole object of Congress, in passing the act of 1820 for the relief of Piatt, seems to me to have been that the accounts of Piatt should be examined, and find out from them whether he was, as he alleged, wrongfully charged with this balance; whether suits against him had been improperly commenced, and he unjustly and illegally imprisoned. If this should be found to be true, then Congress desired and intended that the balance should be cancelled, that the suits should be dismissed and he discharged forthwith. But all questions as to payment to him of other moneys which he might claim from the United States, was reserved for future determination. Such a decision and such an act cannot be construed or tortured into a settlement of "*all claims* against the defendants," nor of any claims except those which came within the purview of the act, which were covered by the proviso, and which were set forth and included in the settlement made thereunder.

II.

The circumstances in which Piatt was placed at this time prevent any such legal effect, even if the intention were clearly expressed in the act.

To a proper understanding of the circumstances surrounding Piatt at the time of the passage of this act of 1820, it is necessary to make some explanation. Piatt had dealings with the United States in three different capacities, and his accounts at the Treasury were divided into three distinct and separate classes.

At the outbreak of the war of 1812–'14 he was a large and prosperous wholesale and retail merchant in Cincinnati.

The ramifications of his trade extended over almost the entire Northwest. His house was headquarters for the small dealers in all that section, and through them his trade was carried to the very doors of nearly every farmer. He was the outlet through which was obtained the dry goods, iron, nails, salt, sugar, leather, &c., which he had brought from the East, and which were the necessaries of life to the frontier settlers; and in return he collected their wheat, corn, pork, flour, whisky, and other country produce. I do not mean that he commanded or controled the entire trade of the Northwest, but I do mean that he commanded and controlled it at that time, to probably a greater extent than any other one man in all that vest territory.

He was a man of indomitable will, great force of character, of the purest integrity and business honor, blessed with health and an iron constitution, and of great acquisitiveness. These qualities, coupled with devotion to a single branch of busisiness, had brought to him great wealth, so that, as a man of business, and a man of wealth, he stood pre-eminent in that country.

When the operations of the war were transferred to the Northwestern country any one with half an eye could see that the great problem to be solved was the subsistence of the army. The army was on the frontier, and without any base for supplies. It was necessarily dependent upon the surrounding country, and could only get that which could be gathered piecemeal from the farmers. This, at best, would be very precarious. The best means were sought to secure the desired end. The President and Secretary of War recognizing the advantages which John H. Piatt possessed, over other men, for the collection of subsistence supplies, and desiring to avail themselves thereof, appointed him a commissary of subsistence. This office was then about the same as it is now.

He thus became an officer of the army, subject to the orders

of his commanding general, bound by the army regulations, and tied down by its forms as to vouchers, contracts, advertisements, receipts, etc., etc.

The experience of a few months taught John H. Piatt that these regulations and forms were so different from his former manner of conducting business, that he could not bring his agents and former business connections into harmony with them, and so he was not able in that capacity to do the amount of good that he had expected, and which had been expected of him.

It was therefore determined after due consultation that it would forward the interests of the army to make a change in his relations. This was attained by the acceptance of his resignation as an officer, and giving him instead thereof, a contract to purchase and deliver the entire subsistence supplies required for the use of the Northwestern army. This is the written contract described in the petition. (1st finding, p. 11.) It was stipulated in this contract that the funds required for their purchase should be advanced to him by the United States. This left him free to return to his old business habits and to resume his former business connections. It was believed that in this way he could do more good for the United States than in his former capacity of officer.

These contracts were made according to the prescribed form then in use. Similar contracts were made with other individuals, two of which have been subjects of examination by this court. One made November 21, 1816, between George Graham, acting Secretary of war, and Benjamin G. Orr, for the furnishing of rations to the troops of the United States in the Mississippi territory.

United States *us.* Jones, 8 Peters, 376.

Another between the same parties January 15, 1817, for the furnishing of rations within the States of South Carolina and Georgia.

United States *vs.* Jones, 8 Peters, 388, 389, 394.

Another between John C. Calhoun, Secretary of War, and said Orr, February 9, 1818, for the furnishing of rations within the State of Georgia.

United States *vs.* Jones, 8 Peters, 406.

In all these cases the United States was the plaintiff, and brought its action on the bonds given for the faithful performance of the contracts. In the two last cases the breaches assigned were the failure of the contractor to properly account for the moneys advanced to him under the tenth article of the contracts, which article is the same as in the case at bar.

See *ibid.*, pp. 388, 389, 400, 401, 412, 417.

I do not wish to be understood as representing that in these cases this Court passed upon and approved these contracts, but to show by its records that similar contracts to the one now at bar were made by the United States; that they were made in the present form, and that upon a breach of these terms the United States commenced and maintained suits thereon.

Piatt thus ceased to be a commissary of subsistence for the Northwestern army, and became its commissary *general* of subsistence.

So true is this that when the general commanding, McArthur, contemplated a movement of his army, he made a requisition in December, 1814, upon Piatt for 800,000 rations, to be delivered within 30 days at different specified places. This requisition was made direct upon Piatt, and not through the subsistence department of the army.

What is true of this is true of all the other operations of the army.

He was charged with the furnishing of the entire subsistence of the Northwestern army; that was his contract, and most notably and faithfully did he perform it, although it

brought him from affluence to poverty, from health to sickness, and from comfort and ease in his own mansion to the disgrace and want of the debtor's prison, wherein he died.

I have already said that he had dealings with the United States in three different capacities, and his accounts were divided into three distinct and separate classes. The first of these was as an officer of the army, a commissary and disbursing officer. In this respect his accounts were kept and to be settled as any other disbursing officer, either at that time or the present. The second capacity in which he appears is that of a contractor, and the second class of accounts which he had at the Treasury, was that for rations furnished under his contract.

In the operations of the war many prisoners were taken. They were brought in and confined as such. They had to be fed. There was no one who could furnish subsistence but Piatt. He was ordered and directed by the commanding general of the War Department to do so. This he did. But it was not within the terms and obligations of his contract, which required him to furnish subsistnce *only* for the *army*.

The same thing appears in regard to Orr's contract.

(U. S. *vs.* Jones, 8 Peters, 417.)

Various tribes of Indians in that country, in the presence of war, and under the influence of Indian and British diplomacy, became uneasy, and it was important to secure them as allies and friends. To this end it was deemed wise to furnish them with rations, and Piatt was ordered to do so. But this was not within the terms and obligations of his contract.

The subsistence supplies of the Canadian inhabitants around Malden and its neighborhood were, for prudential reasons, captured and seized from them, and they brought into the camp of the American army. Rations had to be

furnished to them, and Piatt was ordered to do so. But *that* was not within the terms and obligations of his contract.

He also furnished, under the orders of the commanding general, horses and wagons, teams for the transportation of other departments of the army, not subsistence. This was also outside of his contract.

These various items for rations and transportation which were furnished by him, and which were not within the terms or obligations of his contract, but were *outside* and *beyond* it, form the third class of accounts, which were had with Piatt at the Treasury.

When Piatt resigned his commission as commissary of subsistence, and ceased to be an officer of the army, he had in his hands moneys of the United States belonging to the commissary fund, and for which he was accountable, amounting to $45,112.56. This sum afterwards received some additions in the way of interest, &c., by which it was brought up to $48,230.77, and it was for this sum, and upon this account, that suits were subsequently commenced by the United States against Piatt.

I said that when he resigned as an officer, and began as a contractor, he had in his hands this sum, be it $46,113.56, or be it $48,230.77.

It was the usage and the law in those days, for the Govenment to make advances in money to contractors. (Act July 16, 1798, 1 Stat. L., 610, sec. 6. Act April 21, 1808, 2 Stat. L., 485, sec. 1.) This was subsequently prohibited by act of Congress. (Act January 21, 1823, 3 Stat. L., p. 723.)

Piatt's contract provided that advances should be made by the Government.

In this respect it was the same as Orr's contract, set forth in U. S. vs. Jones, (8 Pet. 375, 387, 399,) wherein $80,000 were advanced.

Under this provision of his contract, and the above usage and law, Piatt transferred the money remaining in his

hands, from his account as an officer, and considered and treated it as an advance upon his contract made by the Government. This money he used and expended in the purchase of subsistence under his contract. He also received from the Government other sums of money, amounting to several thousand dollars, during the summer and fall of 1814, which he also expended in the same way ; and the rations purchased with these various sums of money, were all delivered to, and used by the army.

But Piatt, or the United States, or somebody, neglected to have the proper transfer made on the books of the Treasury, and so this account remained open, and there appeared against him as an officer, this balance of $48,230.77.

After the close of that war, as after the close of the late war, the usual spasmodic efforts were made on the part of the Government to have its officers settle their accounts, and suits were accordingly commenced, I suppose, against others, Orr and Jones for instance, and among the rest, against Piatt to recover this alleged balance. The fifth finding of fact, p. 12, states it thus:

"In September, 1819, an action was brought by the United States against Piatt, and he was arrested on a *capias ad respondendum* for an alleged balance of $48,230.77, due from him as a commissary of subsistence; and while the suit was still pending, and he on bail, Congress passed for his relief the private act 8th May, 1820, (6 Stat. L., p. 245,) in the words following:" &c. * * * *

The same paragraph states the action of the accounting officers under this act, and I have heretofore explained what that action was, together with the subsequent action of Congress. Upon this settlement made by the accounting officers, the balance against Piatt was liquidated, and his accounts as an officer were settled.

In order to secure his release from imprisonment he accepted the same, when the suit was dismissed, and he discharged from jail.

12 Pets 524

From these facts, this proposition is made clear: that, instead of Piatt being indebted to the United States, in the sum of $48,230.77, for which he had been sued, the United States was indebted to him in the two sums of $63,620.48 and $131,508.90. Instead of being the debtor, he was the creditor. Instead of his owing the United States, the United States owed him; and instead of the suit being "The United States *vs.* Piatt," it might properly have been "Piatt *vs.* The United States."

These were the circumstances under which the act of 1820 was passed, and this is the argument which I have used to prove my second proposition, *i. e.*, that the circumstances in which Piatt was placed at the time prevent any such legal effect, (as a settlement in full,) even if the intention were clearly expressed in the act.

No argument need be made to prove to this court that when a man, under the ancient laws providing imprisonment for debt, is arrested and thrown into jail to answer a debt he does not owe, but in which the plaintiff owes him; and while in prison a settlement is offered him, which he accepts in order to be released; that *such* settlement *so* made is of no binding force as a settlement, however definitely or plainly it may have been stipulated and agreed upon.

Brown vs. Pierce, 7 Wall, 214.

United States, Lyon *et al. vs.* Huckabee, 16 Wall, 431.

CONCLUSION.

In answer or opposition to the conclusion of law announced by the Court of Claims, I have but to repeat the two propositions with which I started.

First, the act does not show an intention of settlement on the part of Congress, nor does its language warrant such a construction; and, second, the circumstances in which Piatt was placed at the time, prevent any such legal effect, even if the intention were clearly expressed in the act.

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